
Tamara A. Shockley, United Nations

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THE EVOLUTION OF A NEW INTERNATIONAL SYSTEM OF JUSTICE IN THE UNITED NATIONS: THE FIRST SESSIONS OF THE UNITED NATIONS APPEALS TRIBUNAL

TAMARA A. SHOCKLEY*

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* Ms. Shockley is an Administrative Law Specialist with UNICEF and former Executive Secretary with the United Nations Administrative Tribunal. The views expressed in this article are solely those of the author.
I. INTRODUCTION

On July 1, 2009, the United Nations (UN) created a new legal system of administration of justice in response to the demand by staff members for a justice system that provided adequate safeguards of rights and accountability by management.

The regulation of the rights of staff members in international organizations has developed into a new discipline of public international law. It is acknowledged that the category known as the “international civil servant” exists and requires a regulated tribunal to determine their rights. Due to jurisdictional immunities enjoyed by international organizations, a United Nations staff member does not have recourse to the legal systems of Member States. With the presence of the United Nations and its diverse staff in almost every country in the world, choosing a particular State law to govern an employment dispute would result in arbitrary decisions and the loss of independence by the organization, which is crucial to its existence.

To address the evolving need, international administrative tribunals
have been established to bear the responsibility of deciding internal disputes between an international organization and the staff member.

The principle of jurisdictional immunity in the host State requires international organizations to establish an independent system of dispute resolution to govern the employment relationship with its staff. As stated by C.F. Amerasinghe in the seminal treatise, *The Law of the International Civil Service*, it is the internal law of the organization that governs the employment relationship of international civil servants with the international organization for which they work. The World Bank Administrative Tribunal affirmed this legal principle in *de Merode et al v. International Bank for Reconstruction and Development* stating, “(t)he Tribunal, which is an international tribunal, considers that its task is to decide internal disputes between Bank and its staff within the organized legal system of the World Bank and that it must apply the internal law of the Bank as the law governing the conditions of employment.” If staff members do not have access to the national local courts, it is the obligation of the international organization to provide staff members with access to a court for independent and impartial dispute settlement.

The right to access a tribunal may be implied as a legal requirement stemming from the United Nations Charter and the Universal Declaration of Human Rights. As stated by the International Court of Justice in the case of the *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, the ICJ found that the power to establish a tribunal was essential to ensure justice between the Organization and the staff members. The United Nations has the authority to establish a judicial organ with independence and the capacity to render binding decisions similar to a court of a State. The United Nations established an administrative tribunal as early as 1949, acknowledging the need to

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3. *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, I.C.J. Reports (1954), at 57, an advisory opinion of the International Court of Justice (ICJ) which upheld the legality of the creation of the United Nations Administrative Tribunal. The ICJ stated that the United Nations should afford judicial or arbitral remedy to its own staff for the settlement of disputes which may arise between it and them.
4. *Id.*
provide a judicial organ to settle disputes between the UN and the staff.\footnote{The UN Administrative Tribunal was based on the former League of Nations Administrative Tribunal which was taken over by the International Labour Conference when the League of Nations dissolved in 1946.}

Prior to a discussion on the activities of the newly established Appeals Tribunal in its first two sessions, it is necessary to briefly review the abolished UN Administrative Tribunal.

II. **United Nations Administrative Tribunal (1949–2009)**

The UN Administrative Tribunal was an independent body competent to hear and pass judgment upon applications alleging the non-observance of employment contracts of staff members in the UN Secretariat, Programmes and Funds, and specialized agencies. Underlying the establishment of an administrative tribunal in the UN system, was the view that some measures of employment security and the guarantee thereof were prerequisites to the fostering of a competent international civil service. The Tribunal was established by the General Assembly in its resolution 351 A(IV) of 24 November 1949.\footnote{G.A. Res. 351 A(IV), U.N. Doc. A/Res/351(IV), at 4 (Nov. 24, 1949).} It was composed of seven judges of different nationalities appointed by the General Assembly for four years, with an option to be reappointed once with due regard for equitable geographical representation. Only three Judges would sit in any particular case.

Article 2 of the Statute of the UN Administrative Tribunal stated that the Tribunal would be “competent to hear and pass judgment upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members.”\footnote{Id. at art. 2. Under Article 14 of its Statute, the competence of the UN Administrative Tribunal extended to the United Nations Joint Staff Pension Fund, including all specialized agencies that participated in the Fund, even though they may fall under the jurisdiction of the Administrative Tribunal of the ILO for all other disputes; the United Nations Programmes and Funds, specialized agencies and related organizations that accepted the competence of the Tribunal, the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO), UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the staff of the Registries of the International Court of Justice, the International Tribunal for the Law of the Sea, and the staff of the International Seabed Authority.} During its tenure, the UN Administrative Tribunal decided approximately 1500 cases dating from June 1950 to December 2009.\footnote{United Nations Administrative Tribunal Judgment No. 1 through Judgment No. 1499 available at http://untreaty.un.org/UNAT/main_page.htm.}
In the Report of the Redesign Panel, the Redesign Panel found a number of difficulties with the former appellate justice system. The Redesign Panel found that the UN Administrative Tribunal did not provide adequate remedies and did not promote managerial efficiency or accountability. Further, the Redesign Panel recommended that the jurisdiction of the Appeals Tribunal should be expanded to hear appeals from the Dispute Tribunal, with emphasis placed on the appellate nature of its jurisdiction. The UN Administrative Tribunal was abolished as of December 31, 2009 as a result of the General Assembly’s decision to establish a new system of administration of justice, which created the UN Appeals Tribunal.

Upon the abolishment of the UN Administrative Tribunal, a majority of the pending cases were transferred to the Dispute Tribunal. Since the cases were not transferred directly to the Appeals Tribunal, a new fact-finding process in such cases had to be undertaken by the Dispute Tribunal. On January 1, 2010, 143 cases were transferred by the former UN Administrative Tribunal to the Dispute Tribunal. In the same reporting period, the Appeals Tribunal received 110 appeals, including 10 appeals filed against the UN Joint Staff Pension Board, 14 appeals against the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), 53 cases filed by staff members, and 33 cases filed by the Administration appealing judgments of the Dispute Tribunal.

10. Id. at ¶¶ 13, 74.
11. Id. at ¶ 148.
13. Id. Pending appeal cases from UNRWA, IMO, ICAO and the UN Joint Staff Pension Fund were transferred directly to the Appeals Tribunal, upon signing of a special agreement with the Appeals Tribunal.
15. Id. at ¶ 41.
III. GENERAL ASSEMBLY RESOLUTIONS ESTABLISHING THE NEW UNITED NATIONS INTERNAL SYSTEM OF ADMINISTRATION OF JUSTICE

With the growth of the United Nations into diverse areas of political, economic, social and human rights, environmental, and peace-keeping missions, there has developed a corresponding increase in the number of staff members needed to successfully achieve these new mandates. Since international organizations operate outside of the host State legal system, the employment relationship between the staff and the organization requires internal regulation.

The former system of Administration of Justice in the United Nations was established around 1950, at a time when there were only a few thousand staff members and only a few cases per year.\textsuperscript{16} The beginning of the system of justice was a peer review system relying upon joint participation of volunteer staff members, who advised the Secretary-General on appeals and disciplinary cases.\textsuperscript{17} In the 1990’s, after a careful evaluation of the former system of administration of justice, the Secretary-General concluded that procedures that had worked satisfactorily in the past, with fewer staff, were no longer adequate for the present circumstances.

The attempt to reform the United Nations internal system of justice has been an area of concern for the General Assembly since as early as 1994.\textsuperscript{18} The need for reform was recognized by the General Assembly in the 1995 Secretary-General’s Report of “Reform of the internal system of Justice in the United Nations Secretariat,” which recommended the following measures:

6. The purpose of the proposed reform is threefold:
(a) To enhance earlier reconciliation and resolution of disputes before they develop into formal litigation;
(b) To professionalize the membership of appeals and disciplinary boards, and to provide them the means to dispose of cases in a more expeditious yet fair fashion;
(c) To provide a cost-effective and simple justice system, with the

\textsuperscript{17} See Report of Redesign Panel, supra note 10. These bodies were called the “Joint Appeals Boards” and the “Joint Disciplinary Committees.”
elimination of hidden costs and cross-subsidization.\textsuperscript{19}

Ten years later in General Assembly resolution 59/283 of June 2, 2005,\textsuperscript{20} the General Assembly, recalling its resolutions 57/307 of 15 April 2003 and 59/266 of December 23, 2004, recognized that “a transparent, impartial and effective system of administration of justice was a necessary condition for ensuring fair and just treatment of United Nations staff, and regretted that the present system of administration of justice in the Secretariat continued to be slow, cumbersome and costly.”\textsuperscript{21}

The General Assembly decided that the Secretary-General should form a panel of external and independent experts to consider redesigning the system of administration of justice.\textsuperscript{22} The Panel would be composed of pre-eminent judges with the following terms of reference:

49. Further decides that the terms of reference of the redesign panel shall be as follows:

The redesign panel shall propose a model for a new system for resolving staff grievances in the United Nations that is independent, transparent, effective, efficient and adequately resourced and that ensures managerial accountability; the model should involve guiding principles and procedures that clearly articulate the participation of staff and management within reasonable time frames and time limits;\textsuperscript{23}

In January 2006, the Secretary-General established an external and independent Redesign Panel on the United Nations System of Administration of Justice pursuant to General Assembly resolution 59/283, whose objective was to review and possibly redesign the UN system of administration of justice.\textsuperscript{24}


\textsuperscript{21}. Id. at ¶ 1.
\textsuperscript{22}. Id. at ¶ 47.
\textsuperscript{23}. Id. at ¶ 49.
\textsuperscript{24}. Id. at 32. Rep. of the Redesign Panel on the U.N. System of Administration of Justice, 61st Sess., Session Date, at 1, U.N. Doc. A/61/205 (July 26, 2008). The members of the Redesign Panel were Ms. Mary Gaudron (Australia); Ms. Louise Otis (Canada); Mr. Ahmed El-Kosheri (Egypt); Mr. Diego Garcia-Sayan (Peru); and Mr. Kingsley C. Moghalu (Nigeria).
in international human rights instruments. The Redesign Panel proposed the creation of a new decentralized, independent and streamlined system by strengthening the informal system of internal justice and providing for a strong mediation mechanism in the Office of the Ombudsman. Further, the Redesign Panel proposed establishing a new formal system of justice that replaced advisory boards with a professional and decentralized first instance adjudicatory body that issues binding decision appealable by either party to the second tier adjudicatory body.

The Redesign Panel determined that the structure of the previous formal justice system did not provide proper or adequate remedies and failed to guarantee individual rights. The previous formal justice system was based on an administrative law model in which the staff member had a peer review to make a recommendation on the dispute and which was submitted to the Secretary-General, who made the final decision. The final decision by the Secretary-General could be challenged in the United Nations Administrative Tribunal. The Redesign Panel recommended the establishment of a two-tiered system comprising in the first instance, a decentralized tribunal—the United Nations Dispute Tribunal—composed of professional judges with power to make binding decisions and an appellate level—the United Nations Appeals Tribunal. As part of the reform of the administration of justice, the Redesign Panel proposed that either the staff member or the Organization has the right to appeal a decision from the United Nations Dispute Tribunal to the United Nations Appeals Tribunal. The United Nations Appeals Tribunal would be composed of seven highly experienced judges whose decisions would be final.

In the “Report of the Secretary-General,” A/61/758 of February 23,

25. Id. at 4.
26. Id. at 6.
27. Id.
28. Id. at 16.
29. Id. at 15.
30. Id.
33. Id. at 33, 36.
2007, the Secretary-General agreed with the overall findings of the Redesign Panel that there were significant problems with the existing system of internal justice and accepted most of the Redesign Panel’s recommendations in its entirety. The Secretary-General supported a new judicial system that was professional, independent and decentralized, and agreed that the United Nations Dispute Tribunal and the United Nations Appeals Tribunal would render binding decisions. As for the types of remedies, the Secretary-General endorsed the recommendation that when ordering “specific performance” in cases challenging appointments, promotions, or terminations of appointment, the United Nations Dispute Tribunal should be required to set an amount of compensation that could be paid as an alternative to specific performance. With respect to the award of exemplary and punitive damages, the Secretary-General considered that it would be improper to use public funds for this purpose and these types of damages should not be awarded.

The General Assembly established the new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice in the United Nations in resolution A/61/261 of April 30, 2007. As stated in the resolution, “the new judicial system would be consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure the rights and obligation of staff members and the accountability of managers and staff members.” The General Assembly agreed that the formal system of administration of justice should be comprised of two tiers, consisting of a first instance, the United Nations Dispute Tribunal (UNDT) and an appellate instance, the United Nations Appeals Tribunal (UNAT), which would render binding decisions and order appropriate remedies.

34. Id. at 1–2.
35. Id. at 1.
36. Id. at 7.
37. Id.
38. Id.
39. Id. at 9.
41. Id.
42. Id. at ¶ 19.
The General Assembly reaffirmed its decision to establish a new and independent system of administration of justice in its resolution A/62/228 of February 6, 2008. The General Assembly decided that the two-tier formal system would commence as of January 1, 2009. The judges of both Tribunals would be appointed by the General Assembly based on the recommendations of the Internal Justice Council, a panel of independent experts established to ensure independence and professionalism in the selection of candidates for the vacancy of both Tribunals.

By its resolutions 61/261 of April 30, 2007 and 62/228 of February 6, 2008, the General Assembly established the framework for the Internal Justice Council to ensure independence, professionalism, and accountability in the new system. The Redesign Panel regarded the independence of the judges as a key prerequisite for the new system. The Internal Justice Council provides “recommendations to the General Assembly on two or three candidates for each vacancy in the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, with due regard to geographical distribution.” The Internal Justice Council is composed of a five-member body consisting of a staff representative, a management representative, and two distinguished external jurists, and is chaired by another distinguished external jurist appointed by the Secretary-General. It is responsible for monitoring the formal justice system and compiling a list of judges eligible to be appointed to each judicial position.

The first “Report of the Internal Justice Council,” A/63/489 of October 16, 2008 to the General Assembly, reported on the candidates and the selection process for judges to the Dispute Tribunal and the Appeals Tribunal. The Internal Justice Council considered that the process to identify the suitable candidates should ensure the independence,
professionalism and accountability of the judges. The Internal Justice Council identified suitable candidates for appointment as judges by merit, as well as by geographical and gender diversity, and recommended to the General Assembly two candidates for every judicial post. On March 2, 2009, the General Assembly appointed the seven judges of the Appeals Tribunal from a list prepared by the Internal Justice Council. The judges of the Appeals Tribunal would serve part-time holding three two-week sessions annually. This arrangement would allow some Appeals Tribunal judges to continue to serve as judges in their own countries while they serve their terms of office for the Appeals Tribunal.

IV. UNITED NATIONS APPEALS TRIBUNAL

A. Statute of the Appeals Tribunal

The General Assembly adopted the Statute of the Appeals Tribunal in General Assembly resolution 63/253 of February 23, 2009. The Statute established the Appeals Tribunal as the second instance of the new two-tier formal system of administration of justice. The General Assembly confirmed that the Appeals Tribunal should not have any powers beyond

51. Id. at ¶ 1, 7. The Internal Justice Council reported that 237 applications were received from 55 countries. Of these, 177 were male candidates and 60 were female candidates. The Appeals Tribunal required 15 years judicial experience and the Dispute Tribunal required 10 years judicial experience.

52. Id. at ¶ 10. The Internal Justice Council made recommendations for the three full-time positions for the United Nations Dispute Tribunal in Geneva, Nairobi and New York and the two half-time positions.

53. Id. at ¶ 2. On March 2, 2009, the General Assembly elected the following seven judges: Judge Inés Weinberg de Roca (Argentina); Judge Jean Courtial (France); Judge Sophia Adinyira (Ghana); Judge Mark P. Painter (United States of America); Judge Kamaljit Singh Garewal (India); Judge Rose Boyko (Canada); and Judge Luis María Simón (Uruguay). In 2010, Judge Boyko resigned her judgeship. She was replaced by Judge Mary Faherty (Ireland). (G.A. Res. 65/414 January 28, 2011). Pursuant to paragraph 4 of Article 3 of the Statute of the Appeals Tribunal, three judges were granted a three-year term and, accordingly, the terms of office of Judges Jean Courtial, Kamaljit Singh Garewal and Mark P. Painter were due to expire on June 30, 2012. On February 23, 2012, the General Assembly elected Judge Rosalyn M. Chapman, Judge Jean Courtial, and Judge Richard Lussick to the Appeals Tribunal.

54. The judges of the Appeals Tribunal are paid US $2,400 for each judgment in which they are the rapporteur, and US $600 for each judgment in which they participate, but not as rapporteur.


56. Id. at 14.
those conferred under its Statute.\(^{57}\)

Article 2 (1) of the Statute states the limited competence of the Appeals Tribunal to hear and pass judgment on an appeal of a judgment rendered by the Dispute Tribunal when it is asserted that the Dispute Tribunal has:

(a) Exceeded its jurisdiction or competence;
(b) Failed to exercise jurisdiction vested in it;
(c) Erred on a question of law;
(d) Committed an error in procedure, such as to affect the decision of the case;
(e) Erred on a question of fact, resulting in a manifestly unreasonable decision.\(^{58}\)

As distinct from the former administration of justice system, either party—the Applicant (staff member) or the Respondent (the Secretary-General or head of office with delegated authority)—may file an appeal.\(^{59}\) Article 2 (3) of the Statute further provides that the Appeals Tribunal may affirm, reverse, modify or remand the judgment of the Dispute Tribunal, and issue all orders necessary or appropriate in aid of its jurisdiction and consonant with the present Statute.\(^{60}\) If a dispute arises as to whether the Appeals Tribunal has the competence to decide under the Statute, the Appeals Tribunal shall decide on the matter.\(^{61}\)

Under Article 2 (9), the Appeals Tribunal has the competence to hear and pass judgment on an appeal of a decision of the Standing Committee acting on behalf of the UN Joint Staff Pension Board.\(^{62}\) The Appeals Tribunal shall be competent to hear and pass judgment on an application filed against a specialized agency, in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations, either established by a treaty or where a special agreement has been concluded between the entity concerned and the Secretary-General of the United Nations to accept the terms of the jurisdiction of the Appeals Tribunal.\(^{63}\)

Article 7 (1)(c) of the Statute established the filing formalities that an

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57. Id. at ¶ 28.
58. Id. at 14.
59. Id.
60. Id.
61. Id.
62. Id. at art. 2, ¶ 9.
63. Id. at ¶ 10. The International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the International Seabed Authority (ISA) have accepted jurisdiction of the UN Appeals Tribunal.
appeal must be filed within 45 calendar days\textsuperscript{64} of the receipt of the judgment of the Dispute Tribunal.\textsuperscript{65} The Appeals Tribunal may decide to waive or suspend this deadline, in accordance with Article 7 (1)(c) but only for a limited period of time and in exceptional cases.\textsuperscript{66} Article 8 provides the management of evidence and oral proceedings for the Appeals Tribunal.\textsuperscript{67}

The Appeals Tribunal has the authority to order the following remedies under Article 9 (1) of the Statute:

\begin{enumerate}
\item[(a)] Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion, or termination, the Appeals Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;
\item[(b)] Compensation, which shall normally not exceed the equivalent of two years’ net base salary of the applicant. The Appeals Tribunal may, however, in exceptional cases order the payment of a higher compensation and shall provide the reasons for that decision.\textsuperscript{68}
\end{enumerate}

The Appeals Tribunal may in exceptional cases order the payment of a higher compensation but must provide reasons for that decision.\textsuperscript{69} It cannot award exemplary or punitive damages.\textsuperscript{70} An interesting provision is in Article 9 (4), where the Appeals Tribunal has the authority to order an interim measure to provide temporary relief to either party to prevent irreparable harm and to maintain consistency with the judgment of the Dispute Tribunal.\textsuperscript{71}

Article 10 of the Statute provides that cases before the Appeals Tribunal shall be reviewed by a panel of three judges, except if the

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\textsuperscript{64} On March 8, 2012, in accordance with Article 32(1) of the Appeals Tribunal’s Rules of Procedure, the Judges of the Appeals Tribunal decided to amend Article 7(1)(a) of the Rules to allow the submission of appeals within 60 calendar days of the receipt by a party appealing a judgment of the Dispute Tribunal and Article 9(3) was amended to allow the answer to the appeal to be filed with 60 days of the date on which the respondent received the appeal. These amendments will operate provisionally until approved by the General Assembly.
\textsuperscript{65} \textit{Id.} at art. 7.
\textsuperscript{66} \textit{Id.}
\textsuperscript{67} \textit{Id.} at art. 8.
\textsuperscript{68} Article 9 (1) (a) through (b) of the Statute of the United Nations Appeals Tribunal.
\textsuperscript{69} \textit{Id.}
\textsuperscript{70} \textit{Id.}
\textsuperscript{71} \textit{Id.} at ¶ 4.
\end{flushleft}
President or any two judges consider that a given case raises a significant question of law. The case may then be referred for consideration by the whole Appeals Tribunal. A quorum of five judges is required for an *en banc* hearing.

### B. Rules of Procedure of the Appeals Tribunal

Article 6 (1) of the Statute states that the Appeals Tribunal shall establish its own Rules of Procedure, which are subject to approval by the General Assembly. In General Assembly resolution 64/119 of January 15, 2010, the General Assembly approved the Rules of Procedure for the Appeals Tribunal.

The Rules of Procedure of the Appeals Tribunal contain 33 Articles on the management of the Appeals Tribunal including, election of the President and Vice-Presidents, composition of the panels, time limits, presentation of appeals and answers, oral proceedings, and adoption of judgments. Article 2 of the Rules of Procedure state that the President shall direct the work of the Appeals Tribunal and of the Registry. The Registry, composed of UN Secretariat staff members, provides substantive, technical, and administrative support to the UNAT judges during the adjudication of cases. The President shall represent the Appeals Tribunal in all administrative matters and preside at the meetings of the Appeals Tribunal. Article 7 states that a party must submit its appeal to the Appeals Tribunal within 45 calendar days of receipt of a judgment of the Dispute Tribunal. Article 8 describes the format for submission of the appeal. Submissions are submitted on a

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72. *Id.* at art. 10.
75. *Id.* at art. 6.
78. *Id.* at art. 2.
79. *Id.*
80. *Id.* at art. 7.
81. *Id.* at art. 8.
prescribed form, which must state the legal basis of any of the five grounds for appeal as set out in Article 2 (1) of the Statute of the Appeals Tribunal.\(^8\) Article 5 of the Appeals Tribunal provides for the Tribunal to hold two ordinary sessions in New York, Geneva, or Nairobi.\(^8\) However, in 2010, in view of the backlog of new cases and cases from the former administration of justice system, the Appeals Tribunal held three sessions.\(^8\) In the “Order of the President” dated October 10, 2011, pursuant to Article 32 (1) of the Rules of Procedure, the Judges of the Appeals Tribunal decided to amend Article 5 (1) of the Rules to allow the Tribunal to hold three ordinary sessions per calendar year and may decide to hold the sessions in Geneva or Nairobi.\(^8\)

There are not many major differences from the new rules of the Appeals Tribunal and those of the former UN Administrative Tribunal. One of the major differences between the Appeals Tribunal and the former UN Administrative Tribunal is that all appeals and answers are electronically filed with the Appeals Registry.\(^8\) The work of the former UN Administrative Tribunal was based on submission of voluminous documentation which was received by both parties and sitting judges.\(^8\)

Article 14 of the Rules of Procedure on the “Waiver of rules concerning written pleadings” states that, subject to Article 7 (4) of the Statute of the Appeals Tribunal and provided that the waiver does not affect the substance of the case before the Appeals Tribunal, the President\(^8\) may waive the requirements of any Article of the Rules of Procedure dealing with written proceedings.\(^8\) Article 7 (4) of the Statute states that an application from the Dispute Tribunal shall not be receivable if it is filed

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\(^8\) Id. at art. 2.
\(^8\) Id. at art. 5.
\(^8\) According to the Rules of the United Nations Administrative Tribunal, Article 7 (6) and Article 8 (2) respectively, the applicant and the respondent had to submit seven hard copies of the application and the respondent’s answer.
\(^8\) In the “Rules of procedure of the United Nations Appeals Tribunal” (A/RES/64/119, Annex I, Article 1), the Appeals Tribunal shall elect a President, a First Vice-President, and a Second Vice-President from among the members of the Appeals Tribunal.
\(^8\) See U.N. Appeals Tribunal, supra note 81 at art. 14.
more than one year after the judgment of the Dispute Tribunal, notwithstanding the discretion of the Appeals Tribunal to decide to suspend or waive the deadlines for submission of an appeal. Article 30 on “Waiver of time limits,” allows the President of the Appeals Tribunal or Appeals Tribunal panel designated to adjudicate the case to shorten or extend a time limit fixed by the Rules of Procedure or even waive any rule when the interests of justice so require.

The Appeals Tribunal, as well as the former UN Administrative Tribunal, allow for the intervention by persons not party to the case under Article 16 of the Rules of Procedure. Article 17 of the Rules of Procedure of the Appeals Tribunal allows a “friend-of-the-court brief” for either a person or organization for whom recourse to the Appeals Tribunal is available. Staff associations may submit an application to file a friend-of-the-court brief. The President or panel hearing the case has the discretionary authority to decide whether to grant the application if it would assist in its deliberations.

The Rules of Procedure of the Appeals Tribunal are explicit and detailed, but as with all rules created prior to the actual functioning of a new system, these rules will require amendments to address the new issues as the system progresses. Article 32 provides for the Appeals Tribunal to adopt amendments to the Rules of Procedure, which shall be submitted to the General Assembly for approval.

V. ANALYSIS OF JURISPRUDENCE IN APPEALS TRIBUNAL JUDGMENTS FROM THE FIRST AND SECOND SESSIONS

The Appeals Tribunal held three two-week sessions in 2010. The Appeals Tribunal held its first session from March 15 to April 1 and its

90. Id. at art. 7.
91. U.N. Appeals Tribunal Rules of Procedure, G.A. Res. 64/119, U.N. Doc. A/RES/64/119 (Jan. 15, 2010), Article 1(1) the Appeals Tribunal shall elect a President, a First Vice-President, and a Second Vice-President.
92. Id. at art. 30.
93. Id. at art. 16.
94. Id. at art. 17.
95. Id.
96. Id. at art. 32.
second session from June 21 to July 2, 2010. During the first reporting period from July 1, 2009 to June 30, 2010, the Appeals Tribunal received a total of 110 appeals, including 10 against the UNJSPF, 14 against UNRWA, and 53 cases appeals against judgments of the Dispute Tribunal by staff members and 33 by the Administration. The Appeals Tribunal rendered a number of judgements in its first two sessions on issues ranging from pension cases, disciplinary cases, entitlements, conflict of interest, interlocutory appeals and receivability.

A. Sources of Law

The sources of international administrative law governing employment relations can be derived from a variety of sources. The Statute of the Appeals Tribunal does not refer to formal sources of law to be applied in dispute settlement. Of course, the Appeals Tribunal can and must apply its own Statute and Rules of Procedure. The Charter of the United Nations, which forms an integral part of contemporary international law, has been frequently invoked by the parties before the Tribunal. In a number of cases, the Appeals Tribunal has found it necessary to interpret the provisions of the Statute relative to its powers.

The Appeals Tribunal may rely upon what is commonly known as “general principles of law,” including international human rights law. In Tabari v. Commissioner-General of UNRWA, the Appellant claimed an anomaly in fixing the rate of his Special Occupation Allowance which affected his salary. The Appeals Tribunal relied upon Article 23(2) of the Universal Declaration of Human Rights, affirming that denial of pay

98. Id.
is a violation of the principle of “equal pay for equal work.” In *Muthuswami et al. v. UN Joint Staff Pension Board* the Appellants requested restoration of their full pension after accepting the lump sum based upon “basic fundamental rights concerning equity, fairness, and justice under the Universal Declaration of Human Rights.” The Appeals Tribunal rejected the Appellants’ appeal and referred to a judgment of the Administrative Tribunal of the International Labour Organization (ILOAT) in Judgment 986, *In re Ayoub (No. 2), Von Knorring, Perret-Nguyen (No. 2) and Santarelli (1989).* In *El-Zaim v. UN Joint Staff Pension Board,* to determine the marital rights of a staff member in a pension case, the Appeals Tribunal relied upon the French *Cour de Cassation,* Article 5 of Protocol 7 to the European Convention of Human Rights, which was applicable to a divorce under French law. The Appeals Court considered the validity of the marriage under French law.

In a number of cases, the Appeals Tribunal invoked resolutions of the General Assembly—in particular General Assembly resolutions 61/261 of April 30, 2007 and 62/228 of February 6, 2008—which established the new system of administration of justice. Such resolutions are, with respect to the staff members to whom they applied, part of their terms of appointment and consequently, a source of law for the employment relationship. In *Muthuswami et al. v. UN Joint Staff Pension Board,* the Appeals Tribunal also referred to General Assembly resolution 44/198 of December 21, 1989 and resolution 59/268 of

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102. *Id.*
104. *Id.*
106. *Id.* In the area of questions on marital status, the Appeals Tribunal refers to the law of the staff member’s State of nationality which has been upheld by the former Administrative Tribunal and the Secretary General’s circulars and bulletins. Accordingly for the purpose of the Pension Fund, the civil status of a staff member will be determined by the law of the staff member’s nationality.
December 23, 2004 in which the General Assembly reaffirmed the continuing application of the Noblemaire principle to the United Nations. 109

By virtue of Article 2 of the Statute providing competence to hear and pass judgment on an appeals filed against a judgment rendered by the Dispute Tribunal, the Appeals Tribunal is called upon to apply and interpret the UN Staff Regulations and Rules, which constitute principal legal source for the Tribunal. 110 The UN Staff Regulations and Rules specify the rights of the staff member and the obligations of the Organization. 111 The UN Staff Regulations set forth broad principles and the UN Staff Rules detail methods of implementation. 112 In addition to the UN Staff Regulations and Rules, the Appeals Tribunal must apply internal administrative instructions of the Secretariat and separate administrative instructions from the Programmes and Funds and specialized agencies. 113

The Letter of Appointment or contract signed by every staff member is one of the principal legal documents that the Appeals Tribunal must interpret and apply. 114 The acceptance by the staff member of the Letter of Appointment defines the legal status of the staff member with the

109. The Noblemaire principle is the practice of basing the salaries of international civil servants on those of a comparator civil service. The Noblemaire principle arose from a Committee of Experts—the Noblemaire Committee—that, in 1921, came up with a proposal to base the salaries of Professional staff on those of the best paid civil service in the world. Since then, the report of the Noblemaire Committee has served as the rationale underlying the salary system and is now referred to as the Noblemaire Principle. Since the founding of the United Nations in 1946, the United States of America’s national civil service has been the comparator. See United Nations Common System of Salaries, Allowance and Benefits, available at http://users.ictp.it/~staff/psalaries.html (last updated Feb. 4, 2012).

110. Article 2(1)(a) of the Statute of the Dispute Tribunal allows for an appeal of an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment which included all pertinent regulations and rules and all relevant administrative issuances.


112. Id.

113. Id. at ¶ iii.

114. Article 101, ¶ 1 of the Charter of the United Nations states that “[t]he staff shall be appointed by the Secretary-General under regulations established by the General Assembly.” Staff regulation 4.1 states that “upon appointment, each staff member . . . shall receive a letter of appointment in accordance with the provisions of annex II to the present Regulations and signed by the Secretary-General or by an official in the name of the Secretary-General.”
The parties to the contract are the interested staff members and the Secretary-General. The provisions are binding on both parties. The Letter of Appointment is a source of rights and duties for the parties and a source of law for the Appeals Tribunal.\footnote{The parties to the contract are the interested staff members and the Secretary-General. The provisions are binding on both parties. The Letter of Appointment is a source of rights and duties for the parties and a source of law for the Appeals Tribunal.}

One of the initial issues before the Appeals Tribunal is whether it should rely upon the jurisprudence of the UN Administrative Tribunal. Judicial precedents cannot be considered as sources of law but can be relied upon as an application of general principles of international law and a basis for reasoning. In Maghari v. Commissioner-General of UNRWA, the Respondent referred to the former Administrative Tribunal’s Judgment No. 991, \textit{Shamsi} (2001) in support of his submission.\footnote{Maghari v. Commissioner-General of UNRWA, Judgment No. 2010-UNAT-039.} The Appeals Tribunal found that the case was of “persuasive authority” and adopted the Administrative Tribunal’s reasoning of the case.\footnote{Id.} It should be noted that the Appeals Tribunal did not state that the cases decided by the UN Administrative Tribunal were controlling and binding precedents upon the new judicial system.

While it is established that the internal law of the UN governs the employment relationship, the Appeals Tribunal has no legal obligation to recognize national law.\footnote{See supra, note 2; U.N. Charter art. 105.} However, in Tebeyene v. UN Joint Staff Pension Board, a pension fund case with probate issues, the Appeals Tribunal held that although the New Jersey (United States) Probate Court’s finding was not binding on the Tribunal, it was considered as credible evidence—but not as a source of law for the case.\footnote{Tebeyene v. UN Joint Staff Pension Board, Judgment No. 2010-UNAT-016.} In Doleh v. Commissioner-General of UNRWA, the Appeals Tribunal referred to a judgment from a national authority of the United Kingdom House of Lords,\footnote{Council of Civil Service Unions and Others v. Minister for Civil Service (1985)} to support its findings of judicial review in a disciplinary case.

\footnotesize{115. Annex II to the Staff Regulations states that the appointment is subject to the provisions of the Staff Regulations and the Staff Rules. Annex II provides the conditions of appointment, including the nature of the appointment and the period of appointment.}
\footnotesize{116. See Gaboldon v. the Secretary-General of the United Nations, Judgment No. 2011-UNAT-120, (stating that the “provisions (in the Letter of Appointment) stipulate that the legal act by which the Organization legally undertakes to employ a person as a staff member is a letter of appointment signed by the Secretary-General or an official acting on his behalf”).}
\footnotesize{117. Maghari v. Commissioner-General of UNRWA, Judgment No. 2010-UNAT-039.}
\footnotesize{118. Id.}
\footnotesize{119. See supra, note 2; U.N. Charter art. 105.}
\footnotesize{120. Tebeyene v. UN Joint Staff Pension Board, Judgment No. 2010-UNAT-016.}
\footnotesize{121. Council of Civil Service Unions and Others v. Minister for Civil Service (1985)
The Appeals Tribunal also recognizes jurisprudence from other international organizations. In Shanks v. UN Joint Staff Pension Board the Appeals Tribunal referred to the jurisprudence of the International Labour Organization Administrative Tribunal in its Judgment 1824, In re Sethi (no.4), to support the principle of res judicata as the basis for its judgment. As the Appeals Tribunal decides upon more cases, the Tribunal will cite its own jurisprudence as judicial precedents to base its decisions.

B. Jurisdictional Competence

The Appeals Tribunal is a tribunal of limited competence. Under Article 2(1) of the Statute, the competence of the Appeals Tribunal to hear cases is limited to whether the Dispute Tribunal had exceeded its jurisdiction, failed to exercise its jurisdiction, or whether the Dispute Tribunal had erred on a question of law, fact, or procedure which may affect the decision. Article 7(1)(a) of the Statute states that an appeal shall be receivable if the Appeals Tribunal “is competent to hear and pass judgment on the appeal, pursuant to Article 2, paragraph 1, of the present Statute.”

The Appeals Tribunal must first address whether a case falls within its judicial competence in order to hear and pass judgment upon the Application. If the case does not come within the Tribunal’s statutory competence, it cannot hear the case and it is considered irreceivable. Irreceivability for lack of judicial competence must be distinguished from irreceivability based on ratione temporis, i.e., inadmissibility based on ratione personae.

AC 374 at 408,
123. Shanks v. UN Joint Staff Pension Board, Judgment No. 2010-UNAT-026.
125. Id. at art. 7.
126. Article 2(1)(a) the Appeals Tribunal shall be competent to hear and pass judgment on an appeal asserting that the Dispute Tribunal has exceeded its jurisdiction or competence.
on filing the appeal after a statutory date.\textsuperscript{128} Both types of cases may be determined irreceivable by the Tribunal, but for different reasons. The Appeals Tribunal cannot adjudicate any case outside its jurisdictional competence and the case must be determined to be irreceivable. Alternatively, the Appeals Tribunal may have the competence to hear a case,—based on Article 2 of its Statute—but the case may be irreceivable based upon non-compliance with statutory time-limits. In both situations, the merits of the case will not be heard by the Appeals Tribunal.

In the event of a dispute about whether the Appeals Tribunal has competence under the Statute, under Article 2(8), “the Appeals Tribunal shall decide on the matter.”\textsuperscript{129} While Article 2(1)(a) of the Statute places limitations on the scope of the Appeals Tribunal’s jurisdictional competence, Article 2(8) of the Statute provides for the discretion of the Appeals Tribunal to decide its competence.\textsuperscript{130}

In the first case before the Appeals Tribunal, \textit{Campos v. Secretary-General of the United Nations}, the Appellant challenged the International Justice Council’s decision not to appoint him.\textsuperscript{131} The Appellant stated since the judges of both the Dispute Tribunal and the Appeals Tribunal were recommended by the Internal Justice Council, it created a conflict of interest and tainted the impartiality of both Tribunals.\textsuperscript{132} The Appellant in effect sought the dissolution of the entire Dispute Tribunal bench and the Appeals Tribunal bench by filing a motion stating that the judges of both Tribunals should recuse themselves from hearing his appeal. The Appeals Tribunal considered the limited mandate of the Internal Justice Council to recommend judicial candidates. The Appeals Tribunal found that the Dispute Tribunal and the Appeals Tribunal—created by Statute—lacked the statutory authority to dissolve a body (the Tribunals) created by the UN General Assembly.\textsuperscript{133}

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\textsuperscript{128} Article 7(1)(c) limits the time to file an appeal from the Dispute Tribunal to 45 days (60 days after February 2012). An appeal filed beyond the time limits is considered irreceivable by the Appeals Tribunal. \textit{See} Umpleby v. Secretary-General, 2010-UNAT-090.
\textsuperscript{129} \textit{See} G.A. Res. 63/253 at art. 2, \textit{supra} note 128.
\textsuperscript{130} \textit{Id}.
\textsuperscript{131} Campos v. Secretary-General of the United Nations, Judgment No. 2010-UNAT-001.
\textsuperscript{132} \textit{Id} at 4.
\textsuperscript{133} \textit{Id} at 14.
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C. Competence Ratione Temporis (Time-Barred)

The Statute of the Appeals Tribunal under Article 7(1)(c) restricts the competence ratione temporis to appeals filed within 45 calendar days of the receipt of the judgment of the Dispute Tribunal. In the first two sessions, the Appeals Tribunal considered cases transferred from the docket of the abolished UN Administrative Tribunal, taking into consideration the statutory time periods as stated in its Statute.

In Bustanji v. Commissioner General of UNRWA, the Appeals Tribunal held the appeal was time-barred. The Appellant filed his appeal to the former UN Administrative Tribunal more than seven months beyond the deadline. The Appeals Tribunal determined the previous appeal to the UNRWA Area UN Joint Appeals Board was also time-barred. In this case, although the Appeals Tribunal held the appeal was time-barred, the Tribunal briefly reviewed the underlying facts to the appeal and noted that UNRWA reacted to the sexual harassment allegations in a timely fashion. The Tribunal determined if the appeal had not been time-barred, it would have upheld UNRWA’s actions. Since the case was time-barred, it was not necessary for the Appeals Tribunal to discuss what the Tribunal would have done if it had the opportunity to make a decision on the merits.

Shakir v. Secretary-General of the United Nations is another example of a case in which the Dispute Tribunal determined a case to be time-barred. In Shakir, the Dispute Tribunal considered a case submitted to the former UN Joint Appeals Board. The Appellant presented as justification for waiver of the time deadline evidence of her lengthy

137. Id.
138. Id.
139. Id. at ¶ 10.
140. Id.
hospitalization.\textsuperscript{142} The Appellant’s evidence was submitted for the first time before the Appeals Tribunal.\textsuperscript{143} Under Article 2(5) of the Statute of the Appeals Tribunal, only “in exceptional circumstances” may the Tribunal “receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings.”\textsuperscript{144} In this case, the Appeals Tribunal would not admit evidence which was known prior by the Appellant and could have been presented to the Dispute Tribunal.\textsuperscript{145}

In \textit{Ishak v. Secretary-General of the United Nations}, the case was timely filed and receivable by the Appeals Tribunal, but was time-barred and not receivable to the Dispute Tribunal.\textsuperscript{146} In \textit{Ishak}, the Appeals Tribunal held that the Appellant’s appeal was timely filed and receivable before the Appeals Tribunal in accordance with Article 7 of the Rules of Procedure.\textsuperscript{148} However, the Dispute Tribunal held it had no jurisdiction to hear the Appellant’s appeal, since the application was time-barred and not receivable by the former UN Joint Appeals Board.\textsuperscript{149} The Appeals Tribunal affirmed the decision of the Dispute Tribunal and dismissed the appeal as time-barred.\textsuperscript{150}

In \textit{Hijaz v. Secretary-General of the United Nations}, the Appellant appealed a decision of the Dispute Tribunal which rejected his second request for an extension of the appeal deadline.\textsuperscript{151} Article 8 of the Statute of the Dispute Tribunal provides that an application addressed to the Tribunal is receivable only if it is filed within the established deadlines.\textsuperscript{152} Article 8(3) of the Statute states that the Dispute Tribunal

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\textsuperscript{142} Id.
\textsuperscript{143} Id.
\textsuperscript{144} GA Res. 63/253, at 15, UN Doc. A/RES/63/253 (Mar. 17, 2009).
\textsuperscript{145} \textit{Shakir}, Case No. 2010-UNAT-056, at \textsuperscript{14}.
\textsuperscript{148} Id. at \textsuperscript{14}.
\textsuperscript{149} Id. at \textsuperscript{12}.
\textsuperscript{150} Id. at \textsuperscript{10}.
\textsuperscript{151} \textit{Hijaz v. Secretary-General of the United Nations, Case No. 2010-UNAT-055, Judgment, at \textsuperscript{1} (July 1, 2010), available at http://www.un.org/en/oaj/files/unat/judgments/2010-unat-055e.pdf.}
\textsuperscript{152} Id. at \textsuperscript{19}.
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has the discretion to decide whether to suspend or waive the deadlines to file an appeal for a limited period and will accept the appeal only in exceptional cases. The Appeals Tribunal held the “principle of legal certainty” requires that deadlines be respected. The provisions in the Statute of the Dispute Tribunal do not confer any right upon the Appellant to receive an extension of the deadline to file an application, but provides the Dispute Tribunal with an option to “suspend, waive or extend deadlines where exceptional circumstances can be shown.” The Appeals Tribunal held the waiver of the deadline is not a judgment made in respect of an appeal against an administrative decision within the meaning of Article 2 of the Statute of the Dispute Tribunal. Therefore, the decision of the Dispute Tribunal to suspend, waive, or extend the deadline cannot be appealed and thus, the appeal was not receivable.

Additionally, in Mezoui v. Secretary-General of the United Nations, the Appellant filed a request for extension of her appeal before the former UN Administrative Tribunal—which was transitioning between the old and new internal justice systems—and filed an application before the Dispute Tribunal. The Appeals Tribunal held that the case was an exception and limited to the specific facts and remanded the case back to the Dispute Tribunal for consideration on the merits. The Appeals Tribunal noted the former system may have been too generous in the extension of waiving of time but the Appeals Tribunal will strictly enforce the various time limits in the new administration of justice system.

D. Competence Ratione Personae

The Statute of the Appeals Tribunal in Article 2(2) limits the competence ratione personae to an appeal filed by either party to a
judgment of the Dispute Tribunal. Article 2(2) of the Statute of the Appeals Tribunal has to be read in conjunction with the Article 3(1) of the Dispute Tribunal that an application may be filed by (a) any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes; (b) any former staff member of the United Nations; and (c) any person making claims in the name of an incapacitated or deceased staff member. General Assembly resolution 65/251 of March 2, 2011 requested the Secretary-General to provide information on the remedies available to the different categories of non-staff personnel, such as consultants. The inclusion of individuals with consultant type contracts in the internal administration of justice system would substantially increase the need for additional resources in the Tribunals and legal representation by both respondents and appellants. Future determination by the Appeals Tribunal may be necessary as to who constitutes a “staff member” for purposes of jurisdiction.

In Sefraoui v. Secretary-General of the United Nations, the Appeals Tribunal rejected the appeal filed by the Secretary-General against the judgment of the Dispute Tribunal, which had ruled in favor of the Secretary-General. The Secretary-General appealed against the Dispute Tribunal’s decision to seek clarification of the ratio of the judgment with regard to the application of the legal standard of preponderance of evidence as relied upon in the Secretary-General’s submissions. The Appeals Tribunal held a party in whose favor a case has been decided is not permitted to appeal against the judgment on legal or academic grounds. None of the grounds pleaded by the Secretary-General were valid grounds under Article 2(1) of the Statute of the Appeals Tribunal. Therefore, the appeal was not receivable under Article 7(1) of the Statute of the Appeals Tribunal.

164. Id. at ¶ 4.
165. Id. at ¶ 18.
166. Id.
167. Id. ¶ 18.
E. Competence Ratione Materiale

The subject matter of the appeal or competence *ratione materiale* must come within the Appeals Tribunal’s jurisdictional competence. The Statute of the Appeals Tribunal, Article 2(1)(a) states that the Tribunal shall be competent to hear an appeal which asserts that the Dispute Tribunal has exceeded its jurisdiction or competence. The subject matter of an appeal must allege the non-observance of the terms and conditions of the staff member’s contract of employment or terms of appointment. Based on Article 2, if an Applicant does not allege a violation of the terms and conditions of his contract, the Appeals Tribunal does not have the competence *ratione materiale* to hear the case.

In *Mebtouche v. Secretary-General of the United Nations* the Appellant challenged the decision not to promote him, which promotion procedure was based upon a methodological approach contained in a UNHCR policy. The Appeals Tribunal held neither the Dispute Tribunal nor the Appeals Tribunal had the authority to amend any regulation or rule of the Organization. However, the Appeals Tribunal stated it could point out what it considered as a deficiency in a regulation or rule and recommend a reform or revision, but could not amend a regulation or rule.

In *Muthuswami et al. v. UN Joint Staff Pension Board* the Appellants, who had opted for commutation of a portion of their pension benefit entitlements into a lump sum in exchange for a reduction in their pension benefits for life, sought an amendment through their appeal to the Regulations of the Pension Fund to enable the restoration of a full pension. The Appeals Tribunal held that only the General Assembly can amend the UN Joint Staff Pension Board Regulations.

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170. *Id.* at ¶ 11.
171. *Id.* at ¶ 11.
173. *Id.* at ¶ 33.
from the decision of the Standing Committee of the Pension Board alleging non-observance of the Regulations of the Pension Fund and did not have the competence *ratione materiae* to amend the Pension Fund Regulations. The Appeals Tribunal held that only the General Assembly can make any amendments to the UN Joint Staff Pension Board.

Based on the above jurisprudence, the Appeals Tribunal does not have the authority to amend UN Staff Regulations and Rules and the UN Joint Staff Pension Fund Regulations. However, the Appeals Tribunal has noted it can make a recommendation to revise a regulation or rule.  

**F. Inadmissibility for Failure to State Applicable Grounds for Appeal**

The competence of the Appeals Tribunal is limited to the conditions as set forth in Article 2(1)(a)–(e) of the Statute of the Appeals Tribunal. An application will be inadmissible if it does not state the specific grounds for appeal. The Appeals Tribunal will not decide upon the merits of the case if the Applicant does not allege the grounds for appeal under Article 2 or if it is insufficiently clear as to the basis for the grounds for appeal.

In *Tsoneva v. Secretary-General of the United Nations* the Appellant appealed a judgment in which the Dispute Tribunal ruled against the decision of the UNHCR not to promote her to the P-4 salary level. The Appeals Tribunal held that in order for a party to succeed in having a judgment of the Dispute Tribunal reversed, modified or remanded, the appeal must challenge the impugned judgment on one or more of the grounds referred to in Article 2(1)(a)–(e) of the Statute of the Appeals Tribunal. The Appeals Tribunal determined that the facts of this case showed the Appellant had simply reproduced the arguments submitted first to the UN Joint Appeals Board, and then to the Dispute Tribunal, and

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174. *Id.* at ¶ 33–34.
175. *See* *Mebtouche,* supra note 173 at ¶ 11.
177. *See id.*
179. *Id.* at ¶ 11.
without explaining the grounds for appeal under Article 2(1). The Appeals Tribunal held that the Dispute Tribunal did not err on a question of law and the Appellant failed to establish that the Tribunal erred on a question of fact which could have resulted in a manifestly unreasonable decision.

The Appeals Tribunal upheld this reasoning in Vangelova v. Secretary-General of the United Nations. The Appeals Tribunal noted that the Appellant did not identify which of the five grounds formed the basis for her appeal as set out in Article 2(1) of the Statute. The Appellant’s grounds were based on the same arguments made before the Dispute Tribunal and failed to establish how the Dispute Tribunal erred on questions of law or fact which would result in a manifestly unreasonable decision. The Appeals Tribunal dismissed the appeal and affirmed the Dispute Tribunal judgment.

In Ilic v. Secretary-General of the United Nations, the Appeals Tribunal held that the function of the Appeals Tribunal is to determine if the Dispute Tribunal made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction as prescribed in Article 1(1) of the Statute. Reaffirming Tsoneva v. Secretary-General of the United Nations, the Appeals Tribunal held that the Appellant has the burden of identifying the alleged defects in the Dispute Tribunal’s judgment and state the grounds relied upon in asserting that the judgment is defective. The Appeals Tribunal held that it is not sufficient for the Appellant to state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the Dispute Tribunal. In Crichlow v. Secretary-General of the United Nations, the Appeals Tribunal held that the appeals procedure was of

180. Id. at ¶ 12.
181. Id. at ¶ 16.
183. Id. at ¶ 20.
184. Id. at ¶¶ 20–21.
185. Id. at ¶ 24.
187. Id. at ¶ 29.
188. Id.
189. Crichlow v. Secretary-General of the United Nations, Judgment No. 2010
a corrective nature and was not an opportunity for a party to reargue his or her case. A party cannot repeat on appeal arguments that did not succeed before the Dispute Tribunal. The Appeals Tribunal held that the Appellant must demonstrate that the Dispute Tribunal has committed an error of fact or law warranting the intervention by the Appeals Tribunal.

G. Res Judicata

The principal of res judicata holds that the final judgment on the merits of the case by a tribunal is conclusive upon the parties without further recourse. The doctrine prevents parties from bringing a case back to the Tribunal for further litigation on the same dispute. Res judicata involves the same cause of action between the same parties as to all matters that were litigated or that could have been litigated to bring finality to the case.

In Shanks v. United Nations Joint Staff Pension Board, the Appeals Tribunal affirmed the decision of the Standing Committee of the UN Joint Staff Pension Board on the grounds that no prejudice existed against the Appellant since she had opportunity to present evidence within the scope of the review of her case. The Appeals Tribunal dismissed the appeal. In Shanks, the Appellant filed an Application for “Reconsideration” alleging that the Tribunal had misunderstood the Pension Fund’s internal review procedures. The Appellant acknowledged that her request was outside the permissible grounds for revision, correction, or interpretation under Article 11 of the Statute of the Appeals Tribunal and filed for reconsideration of the case.


190. Id.
191. Id.
192. See BLACK’S LAW DICTIONARY 1425 (9th ed. 2009).
193. Id.
194. Id.
196. Id. at ¶ 21.
197. Id. at ¶ 2.
referred to the jurisprudence of the Administrative Tribunal of the International Labour Organization in its Judgment 1824, *In re Sethi (no.4)*, and stated that the authority of a final judgment—res judicata—cannot be so readily set aside: “there must be an end to litigation and the stability of the judicial process requires that final judgments by an appellate court be set aside only on limited grounds and for the gravest of reasons.” 199 The Appeals Tribunal affirmed its judgment and dismissed the Appellant’s Application. 200

**H. Finality of Judgments Rendered by the UN Administrative Tribunal**

In *Fagundes v. the Secretary-General of the United Nations*, the Appellant appealed from a decision of the Dispute Tribunal which refused to hear her appeal against a judgment of the former UN Administrative Tribunal. 201 The Dispute Tribunal held that the decisions of the former UN Administrative Tribunal were final. 202 The Dispute Tribunal was not given powers to review with respect to judgments of the former UN Administrative Tribunal. 203 The Appellant had exhausted her avenues of appeal. The Appeals Tribunal decided that the Dispute Tribunal had no jurisdiction to hear an appeal against the final decisions of the former UN Administrative Tribunal. 204

**I. Interpretation of Judgment**

According to Article 25 of the Rules of the Appeals Tribunal, and Article 11(3) of the Statute of the Appeals Tribunal, either party may apply to the Tribunal for an interpretation of the meaning or scope of the

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200. Id. at ¶ 6.
202. Id.
203. Id.
204. Id.
One of the first appeals filed by the Secretary-General under Article 30 of the Rules of Procedure of the Dispute Tribunal was for the interpretation of a judgment in *Tadonki v. Secretary-General of the United Nations.* The Appeals Tribunal held that the request for the interpretation of the judgment in this case was not a “judgment” within the meaning of Article 2(1) of the Statute of the Appeals Tribunal and the appeal was considered not receivable. The word “judgment” in Article 2(1) of the Statute of the Appeals Tribunal means a final decision in an action or proceedings. The appeal was filed against the Dispute Tribunal’s interpretation of its judgment in *Tadonki.* The Dispute Tribunal’s interpretation of its own decision is not a new decision or a judgment within Article 2(1) of the Statute of the Appeals Tribunal. If the Applicant or the Secretary-General does not agree with the Dispute Tribunal’s interpretation of its own judgment, the dissatisfaction should be raised on appeal against the substantive judgment. The appeal was dismissed.

VI. TERMS AND CONDITIONS OF EMPLOYMENT: WHAT IS AN ADMINISTRATIVE DECISION?

The Appeals Tribunal has judicial power to adjudicate claims against administrative decisions which allege the nonobservance of the staff members’ contracts or terms of appointment. An administrative decision is a decision taken by an administrative authority which affects the rights of a staff member. The concept that the Secretary-General has unfettered administrative discretion in the exercise of his powers in making decisions which affect a staff member has not been accepted by

207. Id.
208. Id. at ¶ 7.
209. Id. at ¶ 2.
210. Id. at ¶ 7–8.
211. Id. at ¶ 9.
212. Id. at ¶ 11.
the Appeals Tribunal. Administrative decisions can be positive acts taken by the administrative authority or acts of omissions by the administrative authority, which are alleged to be an infringement of the staff member’s rights.

In Tabari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees, the Appellant claimed that an anomaly had occurred in determining the rate of his Special Occupation Allowance (SOA) (Phase II). The Appellant, an Administrative Officer, requested the Director of UNRWA Affairs to rectify the anomalies of the SOA rate as it applied to Administrative Officers. UNRWA took no action and did not respond to the Appellant. The failure to address the Appellant’s request denied him a component of his take home pay. The Appeals Tribunal held that the failure to address the Appellant’s complaint was a failure to decide. The Appeals Tribunal upheld the reasoning taken by the UN Administrative Tribunal in Andronov v. Secretary-General of the United Nations, which stated that:

Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences. They are not necessarily written . . .

These unwritten decisions are commonly referred to, within administrative law systems, as implied administrative decision.

The Appeals Tribunal held that “not taking a decision is also a decision” and ordered that the Appellant be paid the SOA retroactively from January 1, 2006.

The Appeals Tribunal considered whether an Appellant can file an appeal in the absence of a written administrative decision in Schook v.

215. Id. at ¶ 1–2.
216. Id. at ¶ 1.
217. Id. at ¶ 17.
218. Id.
220. Tabari, supra note 218, at ¶ 17.
Secretary-General of the United Nations. The Appeals Tribunal referred to Andronov, which held that not making a decision was a decision by implication. The Appeals Tribunal considered Schook distinguishable from Andronov. In Schook, the Appellant did not receive a notification of a decision in writing which made it impossible to determine when the statutory time limits of two months for appealing the decision would begin. The Appeals Tribunal held that “a written decision is necessary if the time-limits are to be correctly calculated.” Since the Appellant did not receive a “notification of the decision in writing” as required by the former Staff Rule 11.2(a), the judgment of the Dispute Tribunal was reversed and the case remanded for a decision on the merits.

In Planas v. Secretary-General of the United Nations, the Appellant appealed against the dismissal of her application by the Dispute Tribunal holding that she did not contest an administrative decision. The Appeals Tribunal held that the Dispute Tribunal was correct in its finding that the Appellant did not identify an administrative decision in her application. The Applicant challenged her non-selection to a post. She did not apply to a specific post. The Appeals Tribunal noted that the Appellant did not request a management evaluation and did not seek an administrative review under the former internal justice system, which are the internal procedures that must be exhausted before the jurisdiction of the Dispute Tribunal can be invoked. The Appeals Tribunal found the

222. Id.
223. Id.
224. Id.
225. Id.
226. Id.
227. Id. at ¶ 1.
229. Id. at ¶ 16–17.
230. Id. at ¶ 2.
231. Id. at ¶ 21.
232. Id. at ¶ 23.
appeal to be groundless because she did not identify a specific administrative decision. The Appeals Tribunal ruled that if the Appellant continued to believe that the manner in which the Administration proceeded was damaging to her interests, she needed to challenge her non-selection to a specific post through the proper channels—i.e., apply to the post to receive an administrative decision on the selection process.

In Andati-Amwayi v. Secretary-General of the United Nations, the Appellant was refused medical services at a Nairobi hospital while awaiting a contract extension. The Appellant challenged the UN Office in Nairobi’s (UNON) instruction to hospitals in Kenya not to provide medical services to any staff member with an expired Medical Insurance Plan (MIP) card. The refusal was based on administrative instructions, from the Organization to hospitals in Kenya, not to provide medical services to any staff member who had an expired MIP. The Dispute Tribunal held that there was no administrative decision taken by the administration within the meaning of Article 2 of the Statute of the Dispute Tribunal. The Appeals Tribunal found that in cases concerning appointments, promotions, and disciplinary measures, a contestable administrative decision has a direct impact of the terms of appointment or contract of employment of the individual staff member. However, in some instances, an administrative decision involving policy may be of general application to all staff members seeking to promote the efficient implementation of administrative objectives, policies and goals. The Appeals Tribunal stated that “[w]hat constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision.” The Appeals Tribunal affirmed the decision of the Dispute Tribunal that there was no administrative decision within the meaning of Article 2 of

233. Id. at ¶ 24.
234. Id. at ¶ 25.
236. Id.
237. Id. at ¶ 1.
238. Id. at ¶ 25.
239. Id. at ¶ 17.
240. Id. at ¶ 18.
241. Id. at ¶ 19.
the Statute of the Dispute Tribunal, which infringed the terms of his appointment or his contract of employment.242

In Jarvis v. Secretary-General of the United Nations the Appeals Tribunal held that the Appellant’s acceptance of a lump-sum option for home-leave did not preclude the right for him to file an appeal for wrongful calculation.243 The Appellant accepted the lump sum calculation but reserved the right to appeal.244 The Appeals Tribunal held that, although the Appellant accepted the lump-sum, he did not forfeit any right of appeal, and remanded the case to the Dispute Tribunal for a judgment on the merits.245 The Appeals Tribunal held that “[a]ll administrative decisions are subject to review and an administrative instruction . . . could not change this fundamental right.”246

VII. LIMITATION ON RIGHT TO APPEAL: SUSPENSION OF ADMINISTRATIVE DECISION

All administrative decisions can be considered as falling within the scope of the right to appeal, as outlined in Article 2(2) of the Statute of the Appeals Tribunal.247 The exception is that there is no right to appeal a decision of the Dispute Tribunal to the Appeals Tribunal in cases of suspension of action in requests for management evaluation.248 In accordance with UN staff rule 11.2 (a) on “Management evaluation:”

(a) staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a) shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.249

A staff member must apply directly to the Secretary-General or his delegated authority for a management evaluation of a contested

242. Id. at ¶ 25.
244. Id. at ¶ 5.
245. Id. at ¶ 27–28.
246. Id. at ¶ 14.
A staff member may submit an application requesting the Dispute Tribunal to suspend the implementation of an administrative decision—i.e., to temporarily restrain action by management until the staff member receives a final management evaluation. The Dispute Tribunal’s decision on a suspension of action is not subject to appeal to the Appeals Tribunal.

One of the initial questions decided by the Appeals Tribunal was whether the Dispute Tribunal acted within the limits of its competence in suspension of action cases conferred by Article 2(2) of the Statute of the Dispute Tribunal and Article 13 of the Rules of Procedure of the Dispute Tribunal. An Applicant cannot appeal to the Appeals Tribunal the decision of the Dispute Tribunal not to suspend the implementation of an administrative decision during a management evaluation. The Appeals Tribunal noted that this is an exception to the general principal of law that a staff member has a right to appeal a decision of the Dispute Tribunal.

In Tadonki v. Secretary-General of the United Nations, the Appeals Tribunal held that the Dispute Tribunal exceeded its jurisdiction by ordering the continuation of the suspension of action pending the final determination of the substantive case. The Appellant filed an application for suspension of action with the Dispute Tribunal against the decision not to extend his contract beyond July 15, 2010. The Dispute Tribunal ruled that the contested decision was prima facie unlawful and ordered the decision not to renew the Appellant’s appointment be suspended pending the final determination of the merits of the case. The Appeals Tribunal held the following:

UNDT has no authority under Article 2(2) to order as suspension of the contested decision beyond the deadline for management evaluation ... Our three decisions this date should not be interpreted to mean that all

250. Id.
251. Id.
253. Id.
254. Id.
256. Id. at ¶ 6.
257. Id. at ¶ 7.
258. The court here refers to the present case, Tadonki, supra note 259, as well as Onana v. the Secretary-General, Judgment No. 2010-UNAT-008, and Kasmani v. the
preliminary matters are receivable—almost none will be. In these cases, it was clear that UNDT had exceeded its grant of jurisdiction; there was also a divergence among the UNDT courts themselves, so it was our duty to resolve the issue. Most interlocutory matters will not be receivable—for instance, matters of evidence, procedure, and trial conduct. Only when it is clear that the UNDT has exceeded its jurisdiction will a preliminary matter be receivable.\(^\text{259}\)

In this case, the Appeals Tribunal held that the Dispute Tribunal had exceeded its jurisdiction.\(^\text{260}\) In light of the different rulings by the three Dispute Tribunals, it was the duty of the Appeals Tribunal to resolve the issue.\(^\text{261}\)

In \textit{Onana v. the Secretary-General of the United Nations},\(^\text{262}\) and \textit{Kasmani v. the Secretary-General of the United Nations},\(^\text{263}\) the Appeals Tribunal annulled two other decisions of the Dispute Tribunal which suspended the implementation of an administrative decision pending the final determination of the merits of the case. The Appeals Tribunal affirmed that “the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall not have any powers beyond those conferred under their respective statutes.”\(^\text{264}\) The Appeals Tribunal determined that to exclude the right of an Appellant to appeal must be narrowly interpreted.\(^\text{265}\) Based on Article 13(1) of the Rules of Procedure of the Dispute Tribunal, which implements the provisions of Article 2(2) of the Statute, the Dispute Tribunal has the authority to suspend, during the pendency of the management evaluation, the implementation of the contested administrative decision.\(^\text{266}\) Article 36 of the Rules of Procedure of the Dispute Tribunal does not allow the Tribunal to violate the provisions of Article 2(2) of its Statute.\(^\text{267}\) The Appeals Tribunal, affirming the principle in paragraph 28 of the General Assembly Resolution 63/253, held that the Dispute Tribunal exceeded the limits of its jurisdiction or competence under Article 2(2).\(^\text{268}\)

In \textit{Costa v. Secretary-General of the United Nations}, the Appeals

\begin{flushleft}
Secretary-General, Judgment No. 2010-UNAT-011.
\end{flushleft}
\begin{itemize}
\item 259. \textit{Tadonki, supra} note 259, at ¶ 10–11.
\item 260. \textit{Id.} at ¶ 11.
\item 261. \textit{Id.} at ¶ 1.
\item 262. \textit{Onana, supra} note 262.
\item 263. \textit{Kasmani, supra, note} 262.
\item 264. \textit{Onana, supra} note 262, at ¶ 18.
\item 265. \textit{Id.} at ¶ 19.
\item 266. \textit{Id.} at ¶ 10.
\item 267. \textit{Id.} at ¶ 20.
\item 268. \textit{Id.} at ¶ 21.
\end{itemize}
Tribunal considered the issue whether the Dispute Tribunal could waive the time limits for management review.\textsuperscript{269} Article 8(3) of the Statute of the Dispute Tribunal states that “[t]he Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.”\textsuperscript{270} The Dispute Tribunal held that it had no jurisdiction to waive the time limits for management review.\textsuperscript{271} However, a previous ruling in another Dispute Tribunal case,\textsuperscript{272} Rosca v. Secretary-General of the United Nations, held that since the former UN Joint Appeals Board could waive time limits for requests for administrative review, it would be unfair not to waive the time limits for the Appellant who had filed under the former system.\textsuperscript{273} The Appeals Tribunal noted a conflict between the two different rulings in Dispute Tribunal cases and held that the Appeals Tribunal is obligated to resolve the conflict.\textsuperscript{274} The Appeal Tribunal held that the Dispute Tribunal does not have the power to waive the time limits for management review.\textsuperscript{275}

\textbf{VIII. APPEAL OF \textsc{Dispute Tribunal’s Interlocutory Orders}}

The first two sessions of the Appeals Tribunal considered cases on the appeal of procedures before the Dispute Tribunal. Taking into consideration that this is a new judicial institution, the initial decisions of the Appeals Tribunal established the judicial procedures for stakeholders before the Dispute Tribunal. The Appeals Tribunal considered the appeal of a series of rulings made by the Dispute Tribunal on whether it had jurisdiction to receive interlocutory appeals, i.e., appeals against rulings or orders made during the course of trial, before a final judgment is rendered.

In\textsuperscript{276} Bertucci v. Secretary-General of the United Nations,\textsuperscript{277} the Appeals

\begin{footnotesize}
\textsuperscript{270} Id.
\textsuperscript{271} Id.
\textsuperscript{273} See Costa, supra note 273, at ¶ 11.
\textsuperscript{274} Id. at ¶ 17.
\textsuperscript{275} Id. at ¶ 17–18.
\end{footnotesize}
Tribunal Judges met *en banc*. The Appellant challenged his non-selection for a senior level post and challenged the decision to withhold USD $13,829 of entitlements upon his retirement pending the conclusion of disciplinary proceedings against him. These cases were joined by the Dispute Tribunal. By Order No. 124 of September 17, 2009, the Dispute Tribunal ordered the Secretary-General to produce documents relating to the appointment of the Assistant Secretary-General post. The Secretary-General declined to disclose the documents on the grounds that they were irrelevant, confidential, and immune from disclosure on the grounds of privilege. By Order No. 40 (NY/2010) of March 3, 2010, the Dispute Tribunal ordered the Secretary-General to produce to the Tribunal specific documents for its consideration. The Secretary-General filed separate appeals to the Appeals Tribunal against Orders Numbers 40, 42, 43, 44, and 46 of the Dispute Tribunal against the production of the documents. In each appeal, the Secretary-General submitted that his appeals were receivable before the Appeals Tribunal, since the Orders from the Dispute Tribunal constituted judgments within the meaning of Article 2(1) of the Statute of the Appeals Tribunal.

In the deliberation of *Bertucci*, the Appeals Tribunal considered whether under Article 2 of its Statute it was competent to hear the present appeals, and whether the appeals were receivable under Article 7 of its Statute. The Appeals Tribunal noted that the Statute did not clarify whether the Tribunal may hear an appeal only from a final judgment of the Dispute Tribunal proceedings on the merits or whether an interlocutory decision made during the course of the Dispute Tribunal proceedings may also be considered a judgment, subject to appeal. The Appeals Tribunal referred to *Tadonki (No.1) v. Secretary-General of*

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277. Resolution Adopted by the General Assembly, G.A. Res. 64/119, U.N. Doc. A/RES/64/119 (Jan. 15, 2010) (Article 4(2) of the Rules of Procedure provides, “When the President or any two judges sitting on a particular case consider that the case so warrants, the case shall be heard by the whole Appeals Tribunal.”).
279. Id.
280. Id. at ¶ 5.
281. Id.
282. Id.
283. Id. at ¶ 11.
284. Id. at ¶ 12.
285. Id. at ¶ 19.
286. Id. at ¶ 20.
the United Nations,\textsuperscript{287} where the Tribunal ruled that most interlocutory decision will not be receivable on matters of evidence, procedure, and trial conduct.\textsuperscript{288}

The Appeals Tribunal affirmed the reasoning of Tadonki (No.1), Onnan, and Kasmani that an interlocutory appeal is receivable in cases where the Dispute Tribunal has clearly exceeded its jurisdiction or competence.\textsuperscript{289} The Appeals Tribunal saw no reason to depart from the general rule that only appeals against final judgments are receivable.\textsuperscript{290} The Dispute Tribunal is in the best position to decide what is appropriate for the fair and expeditious disposal of a case, and the Appeals Tribunal will not interfere lightly with the broad discretion of the Dispute Tribunal in the management of cases in accordance with Article 19 of the Rules of Procedure of the Dispute Tribunal.\textsuperscript{291} At the time of the hearing before the Appeals Tribunal, the Dispute Tribunal had rendered final judgments in the Bertucci cases and the appeals against the Orders were moot and therefore not receivable.\textsuperscript{292} The majority of the Appeals Tribunal dismissed the appeals.\textsuperscript{293}

It is interesting to note Judge Boyko’s dissenting opinion in Bertucci.\textsuperscript{294} Judge Boyko acknowledged that the Appeals Tribunal would not entertain every type of interlocutory appeal where a party sought to exclude evidence.\textsuperscript{295} In Judge Boyko’s opinion, the trial judge erred in ordering the production of documents without first determining if the privilege claimed was established.\textsuperscript{296} If privileged, the information could not be ordered to be produced because the trial judge could further err by drawing an adverse inference against admissible evidence which should not have been produced.\textsuperscript{297} Judge Boyko would allow the interlocutory appeals and remand the case for a new trial to determine whether any

\textsuperscript{287} Tadonki v. Secretary-General of the United Nations, Judgment No. 2010-UNAT-005, ¶ 11 (Mar. 30, 2010) (Mr. Tadonki filed a number of appeals before the UN Appeals Tribunal. The appeal in reference will hereinafter be called Tadonki (No. 1)).

\textsuperscript{288} Bertucci, supra note 280, at ¶ 21.

\textsuperscript{289} Id.

\textsuperscript{290} Id. at ¶ 25.

\textsuperscript{291} Id. at ¶ 23.

\textsuperscript{292} Id. at ¶ 25. (The majority of the Appeals Tribunal declined to review the question of privilege and the Secretary-General’s “Head of State” contention.)

\textsuperscript{293} Id. at ¶ 27.

\textsuperscript{294} Id. at ¶ 21 (Dissenting Opinion of Judge Boyko).

\textsuperscript{295} Id.

\textsuperscript{296} Id.

\textsuperscript{297} Id.
kind of privilege attached to the impugned documents that were subject to the production order at trial. According to Judge Boyko’s opinion, if privilege is claimed by the Secretary-General as a threshold issue, the trial court must review the privilege issue before the trial proceeds and rule on the admissibility of evidence.

In Calvani v. Secretary-General of the United Nations, the Appeals Tribunal decided that an appeal by the Secretary-General from an interlocutory Order of the Dispute Tribunal for the production of a document was not receivable. The Appeals Tribunal noted that pursuant to Article 9(1) of the Statute of the Dispute Tribunal, “the Dispute Tribunal may order production of documents or such other evidence as it deems necessary” and has discretionary authority in case management. However, the Appeals Tribunal determined that if the Dispute Tribunal committed an error in ordering the production of a document that was immaterial, non-existent or deemed confidential, or drew erroneous conclusions in law or fact in the final judgment as a result of failure to produce a relevant document, the Secretary-General can file an appeal against the final judgment.

In Attandi v. Secretary-General of the United Nations, the Dispute Tribunal rendered an Order (Order No. 02 (NBI/2010)) directing the Appellant to complete his appeal by a certain date or his case would be removed from the docket. The Appellant did not comply, but appealed the Order to the Appeals Tribunal. The Appeals Tribunal, referring to Bertucci, held that an Order is not a judgment against which an appeal can be filed. The Appeals Tribunal held that Attandi was not receivable because it was not a final judgment rendered by the Dispute Tribunal.

298. Id.
299. Id.
301. Id. at ¶ 8–9.
302. Id. at ¶ 9.
303. Id. at ¶ 8–9.
304. Id.
305. Id. at ¶ 32.
306. Id.
In Atogo v. Secretary-General of the United Nations, the Appellant requested to strike out the Secretary-General’s response or, in the alternative, to transfer his case from the Dispute Tribunal in Nairobi to the Dispute Tribunal in Geneva.\footnote{Atogo v. Secretary-General of the United Nations, Judgment No. 2010-UNAT-054, ¶ 1 (July 1, 2010), available at http://www.un.org/en/oaj/files/unat/judgments/2010-unat-054.pdf.} The Appeals Tribunal held that this was an appeal from an interlocutory decision of the Dispute Tribunal which had denied the Appellant’s motion to strike out the defense of the Secretary-General and denied the transfer of the matter to another Dispute Tribunal.\footnote{Id. at ¶ 9.} The Appeals Tribunal affirmed Bertucci—as a general rule, only appeals against final judgments are receivable.\footnote{Id.}

In Wasserstrom v. Secretary-General of the United Nations, the Secretary-General filed an interlocutory appeal against a decision of the Dispute Tribunal that the determination by the Director of the Ethics Office that no retaliation occurred constituted an administrative decision within the jurisdiction of the Dispute Tribunal.\footnote{Wasserstrom v. Secretary-General of the United Nations, Judgment No. 2010-UNAT-060, ¶ 1 (July 1, 2010), available at http://www.un.org/en/oaj/files/unat/judgments/2010-unat-060.pdf.} The Secretary-General also filed against the Dispute Tribunal’s Order to disclose the investigation report of the Office of Internal Oversight Services (OIOS).\footnote{Id.} The Appeals Tribunal first determined whether the appeal was receivable under Article 7 of its Statute.\footnote{Id. at ¶ 15.} The Tribunal found, as previously held by the Appeals Tribunal in Tadonki (No. 1), interlocutory appeals on matters of evidence, procedure, and trial conduct are not receivable.\footnote{Id. at ¶ 16.} Only appeals against final judgments are receivable.\footnote{Id.} As stated in Bertucci, an interlocutory appeal is receivable where the Dispute Tribunal has clearly exceeded its jurisdiction or competence.\footnote{Bertucci, supra note 280, at ¶ 21.} If the Dispute Tribunal dismisses a case on the grounds that it is not receivable under Article 8 of its Statute, it is a final judgment which can be appealed to the Appeals Tribunal.\footnote{Wasserstrom, supra note 314, at ¶ 18.} Any errors in law or in fact during the consideration of the merits by the Dispute
Tribunal can be properly raised later in appeal against the final judgment. 317 In this case, the determination made by the Director of the Ethics Office must be adjudicated on the merits and cannot be subject to an interlocutory appeal. 318 The order of production of documents is an evidentiary matter to be decided by the Dispute Tribunal. 319 The Appeals Tribunal determined that the appeal was not receivable. 320

IX. SUBJECT MATTER OF APPEALS

The Tribunal is competent to deal with subject-matter which must come within the parameters of the alleged nonobservance of contracts of employment of staff members. 321 The subject matter can be any administrative decision that has an effect on a staff member’s terms and conditions of employment. 322 The words “contracts” and “terms of appointment” include all pertinent UN regulations and rules in force at the time of the alleged nonobservance, including disciplinary matters and staff pension regulations. 323 The Appeals Tribunal cannot examine pleas proprio motu (i.e., on its own motion) even though the subject matter may be within the competence of the Appeals Tribunal. 324

A. Fixed-Term Contracts

The jurisprudence of the former UN Administrative Tribunal held that a staff member with a fixed-term appointment has no expectancy of renewal. 325 In view of the recent changes in contractual status of staff members in the UN and the reduction in employment stability within the organization, management in the United Nations was anxious to hear whether this long-standing jurisprudence would be upheld by the Appeals

317. Id. at ¶ 19.
318. Id. at ¶ 20.
319. Id. at ¶ 21.
320. Id. at ¶ 22.
322. Id.
323. Id.
324. Rules of the Court, International Court of Justice, Art. 75, ¶ 1 (authorizing the International Court of Justice to examine provisional measures proprio motu proclaiming that “the Court may at any time decide to examine proprio motu whether circumstances of the case require the indication of provisional measures which ought to be taken or complied with by any or all of the parties”).
Tribunal.326 In the UN, a staff member’s legal status is controlled by the terms of his or her appointment—whether fixed-term, permanent, or the recently established continuing appointments.327 A large number of UN staff members have a fixed-term appointment which can expire without notice regardless of the years of service and performance evaluation.328 The UN Administrative Tribunal held that if the possibility exists that there may be a factor in the surrounding circumstances which creates a right to renewal to a fixed-term appointment, the appointment may be extended.329

In *Syed v. Secretary-General of the United Nations*, the Appeals Tribunal affirmed the general principle that a fixed-term appointment has no expectancy of renewal or of conversion to any other type of appointment.330 Although the Appellant made many allegations, the Dispute Tribunal found that there were no circumstances that would take the Appellant’s case out of the general rule.331 The Dispute Tribunal’s decision was affirmed.332 The Appeals Tribunal upheld the long-standing jurisprudence of the former UN Administrative Tribunal that fixed-term contracts do not carry any right of renewal.

In *Balestrieri v. Secretary-General of the United Nations*, the Appellant’s fixed-term appointment was not extended due to a lack of funding for

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326. *Id.* at Art. I, ¶ 5.
329. The Tribunal has consistently held that fixed-term contracts do not carry any right of renewal and that no notice of termination is necessary in such cases. Exceptions to this rule may be found in countervailing circumstances, such as an express promise or an abuse of discretion including bias, prejudice, or other discrimination against the staff member, or any extraneous or improper motivation on the part of the Administration. *See* Judgments No. 205, *El-Naggar* (1975); No. 614, *Hunde* (1993); and No. 885, *Handelsman* (1998).
331. *Id.*
332. *Id.* at ¶ 14.
the post. The Appeals Tribunal confirmed that staff members who serve under a fixed-term appointment do not have a right to renewal, unless there are countervailing circumstances. The former UN Administrative Tribunal held that exceptions to this rule may be found in countervailing circumstances, such as an express promise or an abuse of discretion, including bias, prejudice or other discrimination against the staff member, or any extraneous or improper motivation on the part of the Administration.

In Castelli v. Secretary-General of the United Nations, the Appellant filed for relocation grant in accordance with a UN administrative instruction for excess baggage, shipments, and insurance. Staff members entitled to unaccompanied shipment could opt for a lump-sum payment in lieu of the entitlement. The administration conceded that continuous employment for a period of one year or longer gave rise to the entitlement for the grant. The Appellant was given a fixed-term contract beginning April 4, 2007 for eight months and 28 days, which was extended through June 30, 2008. The Appellant had to take a break in service for three days, although he continued to work during those days. He submitted his resignation after one year and two weeks of de facto continuous service and filed for the relocation grant. In accordance with staff rule 104.14(h)(i), all appointments of one year or longer are subject to review by the central review bodies.

334. Id. at ¶ 15.
337. Id. at ¶ 18.
338. Id. at ¶ 19.
339. Id. at ¶ 1.
340. Id. at ¶ 4.
341. Id. at ¶ 5.
342. Id. at ¶ 8.
Appeals Tribunal found that unless a contract is fake or fraudulent, a staff member’s contract gives rise to entitlements upon the signing and acceptance by the staff member of his letter of appointment. 343 Where an impropriety was entirely attributable to the administration and the staff member acted in good faith, he or she is entitled to compensation for the damage suffered as a result of the maladministration. 344 The Appeals Court held that in this case, in view of the irregularity committed by the administration in violation of the Staff Regulations and Rules and the Appellant’s rights, the administration could not deny him the entitlement of a relocation grant. 345 The Appeals Tribunal upheld the findings of the Dispute Tribunal. 346

In Adwan v. Commissioner General of UNRWA, the Appeals Tribunal affirmed that the administration had the discretionary authority to decide whether to reinstate the Appellant after submission of his resignation. 347 The Appeals Tribunal held “it was within the employer’s right to refuse to reinstate him” and dismissed the appeal. 348 In Maghari v. Commissioner-General of UNRWA, the Appeals Tribunal affirmed the decision of the UNRWA Commissioner-General not to accept the Appellant’s withdrawal letter of his early retirement. 349 The Appellant provided no evidence of prejudice, improper motivation, procedural irregularity, or error of law in the decision not to accept his request for the withdrawal of his resignation and the Appeals Tribunal dismissed the appeal. 350

B. Promotion

The Appeals Tribunal stressed the need for procedural and substantive fairness in taking discretionary decisions, such as promotion. As the UN is an employment institution, the staff member has a right to fair and

343. Id. at ¶ 24.
344. Id.
345. Id. at ¶ 26.
346. Id. at ¶ 28.
348. Id. at ¶ 24–25.
350. Id. at ¶ 21.
equitable procedures, especially in the area of promotion. One of the major tasks for review by the Appeals Tribunal was to confirm whether an Appellant was accorded due process in the promotion process.\footnote{Andrysek v. Secretary-General, 2010-UNAT-070; Antaki v. Secretary-General of the United Nations, 2010-UNAT-096; Ilic v. Secretary-General of the United Nations, 2010-0UNAT-051; Dualeh v. Secretary-General of the United Nations, 2011-UNAT-175.}

In \textit{Ardisson v. Secretary-General of the United Nations}, the Appellant appealed against a judgment of the Dispute Tribunal not to rescind the decision of the UNHCR to promote him to the P-5 salary level.\footnote{Ardisson v. Secretary-General of the United Nations, Judgment No. 2010-UNAT-052, ¶ 1 (July 1, 2010), available at http://www.un.org/en/oaj/files/unat/judgments/2010-unat-052e.pdf.} The Appeals Tribunal held that “whatever the gravity of the irregularity committed by the Administration... the Dispute Tribunal did not commit an error of law in [determining] that it was not for the Tribunal to decide that [a] staff member should be promoted False.”\footnote{Id., at ¶ 20.} “The powers of the Appeals Tribunal are limited by the provision of Article 9(1), of its Statute, which are similar to Article 10(5) of the Statute of the Dispute Tribunal.”\footnote{Id. at ¶ 21.} The Appeals Tribunal cannot order the respondent to promote the Appellant.\footnote{Id.} The Dispute Tribunal should bear in mind two considerations in determining compensation: the nature of the irregularity that led to the rescission of the contested administrative decision and the assessment of the staff member’s genuine prospects for promotion, if the procedure had been regular.\footnote{Id. at ¶ 24.} The Appeals Tribunal upheld the decision of the Dispute Tribunal which rescinded the decision not to promote the Appellant and provided that the High Commissioner could elect to pay the Appellant compensation instead of executing the decision of rescission.\footnote{Id. at ¶ 1.}

In \textit{Luvai v. Secretary-General of the United Nations}, the Appellant alleged that since the Administration failed to include the correct number of vacant posts in the vacancy announcement, he did not apply.\footnote{Luvai v. Secretary-General of the United Nations, Judgment No. 2010-UNAT-014, ¶ 1 (July 8, 2010), available at http://www.un.org/en/oaj/unat/judgments/2010-unat-014.pdf.} The Appeals Tribunal held that minor errors in the promotion process prejudiced no one’s rights and there was no individual prejudice to him.
in the recruitment process. The Appeals Tribunal held that if a staff member does not apply to a post, he or she will carry the burden to contest the process. This decision suggests that if a staff member wishes to contest the selection or non-selection to a post, the staff member should apply to that post in order to have standing to file an application against the recruitment decision.

In Hussein v. Secretary-General of the United Nations, the Appellant sought a stay of proceedings pending the outcome of the recruitment process to a re-advertised post, for which she had applied to the initial advertisement of the post. The Appeals Tribunal upheld the judgment of the Dispute Tribunal that no right of the Appellant had been infringed. The Appeals Tribunal held the Applicant had no cause of action—since she had applied to both vacancy announcements of the post, she had not been denied an opportunity to compete for the post in question.

X. DISCIPLINARY MEASURES

The discretionary authority of the Organization in disciplinary matters to discipline a staff member is subject to judicial review. However, discretionary power in disciplinary actions is not absolute and cannot be exercised arbitrarily. In regard to disciplinary cases, the Appeals Tribunal will examine the decision taken by the Organization to determine whether the administration acted properly in imposing disciplinary sanctions. Several disciplinary cases, cited below, considered by the Appeals Tribunal were from United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and transferred to the Appeals Tribunal from the former UN Administrative Tribunal.

In one of the first disciplinary cases considered by the Appeals Tribunal, Mahdi v. Commissioner-General of UNRWA, the Appellant was dismissed for enabling people to fraudulently access UNRWA telephone lines for international calls. The Appeals Tribunal examined whether

359. Id. at ¶ 28.
360. Id.
362. Id. at ¶ 11.
363. Id. at ¶ 12.
364. Mahdi v. Commissioner-General of UNRWA, Judgment No. 2010-UNAT-
(i) the facts on which the disciplinary measure was based had been established; (ii) whether the established facts legally amounted to misconduct under the Regulations and Rules; and (iii) whether the disciplinary measure applied was proportionate to the offence.\footnote{365} Although the former UN Joint Appeals Board found the sanction imposed was not proportionate to the act of misconduct, the Appeals Tribunal reviewed the totality of the evidence and affirmed the decision to dismiss the Appellant.\footnote{366}

The Appeals Tribunal in 	extit{Abu Hamda v. Commissioner General of UNRWA} examined whether there were sufficient grounds established to justify the disciplinary measure of demotion.\footnote{367} The Appeals Tribunal affirmed the decision that the Appellant had committed misconduct, but found mitigating factors.\footnote{368} The Appeals Tribunal considered whether the facts had been established, whether the established facts legally amounted to misconduct, and whether the disciplinary measure applied was proportionate to the offence.\footnote{369}

In 	extit{Abu Hamda}, the Appeals Tribunal stated that tribunals do not interfere in the exercise of a discretionary authority unless there is evidence of illegality, irrationality, and procedural impropriety.\footnote{370} The Appeals Tribunal relied upon the persuasive authority, 	extit{Kiwanuka v. Secretary-General of the United Nations}:

In reviewing this kind of quasi-judicial decision and in keeping with relevant general principles of law, in disciplinary cases the Tribunal generally examines (i) whether the facts upon the disciplinary measures were based have been established; (ii) whether the established facts legally amount to misconduct or serious misconduct; (iii) whether there has been any substantive irregularity (e.g. omission of facts or consideration of irrelevant facts); (iv) whether there has been any procedural irregularity; (v) whether there was an improper motive or abuse of purpose; (vi) whether the sanction is legal; (vii) whether the sanction imposed was disproportionate to the offence; (viii) and, as in the case of discretionary powers in general, whether there has been arbitrariness. This

\footnote{365}{Id. at ¶ 27.}
\footnote{366}{Id. at ¶ 38-39.}
\footnote{368}{Id.}
\footnote{369}{Id. at ¶ 24-42.}
\footnote{370}{Id. at ¶ 37.}
listing is not intended to be exhaustive.371

The Appeals Tribunal found that since UNRWA did not take into consideration additional facts of misappropriation by the Appellant’s supervisor, the facts upon which the disciplinary measure was based had not been established.372 The Appeals Tribunal set aside the disciplinary measure of demotion with loss of salary and transfer, and substituted it with another disciplinary measure of written censure.373

In Doleh v. Commissioner-General of UNRWA, the Appeals Tribunal stated that the three grounds upon which administrative action is subject to judicial review would be ‘‘illegality’’, the second ‘irrationality’ and the third ‘procedural impropriety.’’374 The Appeals Tribunal determined that UNRWA’s decision was legal, rational, and procedurally proper.375 However, the Appeals Tribunal decided that the decision to terminate the Appellant’s services was disproportionate based on the facts.376 The Appellant was found to have changed the medical records of a patient.377 The patient later died but her death was unrelated to the act of the Appellant.378 The Appeals Tribunal held that the Appellant’s act of indiscretion should not have such a huge impact on her livelihood.379 The Appeals Court set aside the decision of UNRWA and ordered the Administration to either reinstate her into service or, under Article 9(1)(a) of the Statute of the Appeals Tribunal, elect to pay an alternative compensation equivalent to two years net base pay.380

In Maslamani v. Commissioner-General of UNRWA, the Appeals Tribunal held: (1) the Commissioner-General of UNRWA had broad discretionary authority in disciplinary matters; (2) the facts on which the Appellant’s termination was based were established; (3) the established facts legally amounted to serious misconduct; and (4) there were no

373. Id. at ¶ 43.
375. Id. at ¶ 20.
376. Id.
377. Id. at ¶ 22.
378. Id.
379. Id. at ¶ 23.
380. Id. at ¶ 24.
The Appeals Tribunal upheld the Appellant’s termination as legal and not disproportionate to the offences committed. In Haniya v. Commissioner-General of UNRWA, the Appeals Tribunal treated UNRWA’s administrative decision to terminate the services of the Appellant as a disciplinary measure, since it conducted an investigation into the Appellant’s alleged misconduct. Based on disciplinary standards, the Appeals Tribunal held that the Appellant’s misconduct was established, the sanction was proportionate, and his due process rights were respected.

In Adwan v. Commissioner-General of UNRWA, the Appeals Tribunal held that the appeal was time-barred since the Appellant filed her appeal four months beyond the date she received the administrative decision. Further, the Appellant delayed fulfilling the formal requirements for resubmission of the appeal to the former Administrative Tribunal. The Appeals Tribunal found the appeal not receivable. Although the Appeals Tribunal held that the appeal was time-barred, the Tribunal proceeded and considered the case on its merits. The Appeals Tribunal decided that the standard of review for a disciplinary measure was “whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence.” The Appeals Tribunal was satisfied that the established facts clearly constituted misconduct warranting a disciplinary measure and, since the Appellant’s conduct had direct consequences for the functioning of the office, the imposed sanction was proportionate to the offence.

382. Id. at ¶ 21.
384. Id.
386. Id. at ¶ 13.
387. Id. at ¶ 22.
388. Id. at ¶ 23-27.
389. Id. at ¶ 24, citing Haniva, supra note 387, at ¶ 31.
390. Id. at ¶ 28.
Appeals Tribunal dismissed Adwan as time-barred and not receivable, and therefore could have concluded the Judgment at that point, the Tribunal continued to review the case on the merits and analyzed whether the facts warranted a disciplinary measure.391

In *Aqel v. Commissioner-General of UNRWA*, the Appellant appealed the administrative decision to terminate his appointment for misconduct.392 The Appeals Tribunal held that the standard of review to support a finding of misconduct was “clear and convincing evidence.”393 Next, the Appeals Tribunal held that having established misconduct and the seriousness of the incident, the Tribunal could not review the level of sanction imposed, which falls within the discretion of the Commissioner-General.394 The Appeals Tribunal found that the sanction could only be reviewed by the Tribunal “in cases of obvious absurdity or flagrant arbitrariness, which has not been established.”395 However, in *Abu Hamda*, the Appeals Tribunal set aside the judgment because the proportionality of the sanction was too severe.396 These two cases can be distinguished. In *Abu Hamda*, the Appellant provided proof of the erroneous, inconsistent, and fallacious nature of the contested decision. Conversely in *Aqel*, the Appellant failed to substantiate his contentions which did not warrant the Tribunal to examine the proportionality of the disciplinary measure.

**XI. Pension**

The Appeals Tribunal considered a number of pension cases which were transferred directly to the Tribunal from the former UN Administrative Tribunal.397 A staff member’s rights under the UN pension plan pertain to his or her conditions of employment.398 In *Skoda v. UN Joint Staff Pension Board*, the Appellant did not make his contribution

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391. *Id.* at ¶ 23–27.
393. *Id.* at ¶ 8.
394. *Id.* at ¶ 20.
395. *Id.* at ¶ 35.
396. *Abu Hamda*, supra note 371, at ¶ 43.
397. In accordance with Article 2(9) of the Statute, the United Nations Joint Pension Fund has a special arrangement with the Appeals Tribunal that all cases are appealed directly to the Appeals Tribunal.
to the Pension Fund during his secondment from UNICEF to the World Bank.399 The Appeals Tribunal held that every participant in the Fund has a stake in the success of the Fund.400 A participant must make his corresponding contribution in order for the Organization to make its contributions to his account.401 The Appeals Tribunal dismissed the appeal.402

In Frechon v. UN Joint Staff Pension Board, the Appeals Tribunal held that Article 2(9) of the Statute, provides the Tribunal the competence to hear and pass judgment on an appeal of a decision of the UN Joint Staff Pension Board or its Standing Committee alleging non-observance of the Regulations of the UN Joint Staff Pension Fund (UNJSPF).403 The Tribunal reviewed the case and found that there were disputed facts.404 The Appeals Tribunal rescinded the decision and remanded the Appellant’s case back to the Standing Committee to review the facts.405

Nock v. UN Joint Staff Pension Board held that under Article 24 of the Fund’s Regulations, participants re-entering the Fund after January 1, 1983 could restore their prior contributory service only if the prior period of contributory service was for less than five years.406 In 2006 the limitation on the right to restoration for existing and future participants based on the length of service was eliminated.407 The Tribunal held that Article 24 of the UNJSPF Regulations before and after its 2006 amendment only allowed for restoration of a participant’s most recent period of contributory service.408 In Neville v. UN Joint Staff Pension Board, the Appeals Tribunal rejected the Appellant’s request

400. Id. at ¶ 17.
401. Id. at ¶ 19.
402. Id. at ¶ 23.
404. Id. at ¶ 1.
405. Id.
407. Id. at ¶ 16.
408. Id. at ¶ 17.
for restoration of her prior contributory service since she failed to give notice to restore her most recent contributory service.\footnote{Neville v. UN Joint Staff Pension Board, Judgment No. 2010-UNAT-004, ¶ 13 (Mar. 30, 2010), available at http://www.un.org/en/oaj/unat/judgments/2010-unat-004.pdf.} The Appeals Tribunal held that the UNJSPF does not have discretion under Article 24(a) of its Regulation to make an exception.\footnote{Id. at ¶ 14.} The Appeals Tribunal affirmed in Carranza v. UN Joint Staff Pension Board that Article 24 applied only to staff who were ineligible to restore previous contributory service.\footnote{Carranza v. UN Joint Staff Pension Board, Judgment No. 2010-UNAT-019, ¶ 17 (Mar. 30, 2010), available at http://www.un.org/en/oaj/unat/judgments/2010-unat-019.pdf.} The Appellant was eligible to restore his prior service but failed to do so in a timely manner.\footnote{Id.} The Appeals Tribunal dismissed the appeal.\footnote{Id. at ¶ 14–18.}

Although the Appeals Tribunal generally does not apply the national laws of the staff member to decide upon a dispute, the Tribunal upheld the long-standing jurisprudence of the former UN Administrative Tribunal that for purposes of the Pension Fund, the civil status of a staff member will be determined by the laws of the staff member’s nationality.\footnote{See, e.g. Adrian v. Secretary-General of the United Nations, Judgment No. 2010-UNDT-072, at 289 (July 23, 2004), available at http://untreaty.un.org/cod/UNJuridicalYearbook/pdfs/english/ByVolume/2004/chpV.pdf.} In El-Zaim v. UN Joint Staff Pension Board, the Appeals Tribunal held that on questions of marital status, the Tribunal will refer to the law of the staff member’s State of nationality.\footnote{El-Zaim v. UN Joint Staff Pension Board, Judgment No. 2010-UNAT-007, ¶ 23 (Mar. 30, 2010), available at http://www.un.org/en/oaj/unat/judgments/2010-unat-007.pdf.}

In Tebayene v. UN Joint Staff Pension Board, the Appeals Tribunal considered whether evidence established that Mr. Mandeng, a UN staff member, native of Cameroon and resident of the U.S., had obtained a valid divorce in Cameroon in 1973 from his first marriage to a U.S. citizen, Ms. Wagner.\footnote{Tebayene v. UN Joint Staff Pension Board, Judgment No. 2010-UNAT-016, ¶ 1, 19, 45 (Mar. 30, 2010), available at http://www.un.org/en/oaj/unat/judgments/2010-unat-016.pdf.} Mr. Mandeng married a second wife, Ms. Tebayene Mamo in 1989.\footnote{Id. at ¶ 1.} Mr. Mandeng died.\footnote{Id. at ¶ 1.} Both women claimed a
widow’s benefit.\textsuperscript{419} An interesting aspect of Tebeyene was that the UN Joint Staff Pension Fund submitted evidence from the Essex County New Jersey Probate Court proceedings, in which Ms. Tebeyene was represented by legal counsel, where the issue of the Cameroon divorce was litigated.\textsuperscript{420} The Essex County New Jersey Probate Court ruled that the Cameroon divorce decree was invalid and that Mr. Mandeng had not completed proceedings to dissolve his marriage to Ms. Wagner in the New Jersey divorce court.\textsuperscript{421} The proceedings in New Jersey were terminated by his death.\textsuperscript{422} Ms. Wagner was not aware of any Cameroon divorce proceedings.\textsuperscript{423} The Appeals Tribunal held that although the State of New Jersey Probate Court’s finding was not binding on this Tribunal, it was considered credible evidence, and upheld the decision of the UNJPF which awarded the widower’s benefit to Ms. Wagner.\textsuperscript{424} The Appeals Tribunal’s holding demonstrated that the Tribunal will consider national judicial proceedings as credible evidence, but not as the ruling law of the case.

XII. Remedies

The Statute of the Appeals Tribunal specifically provides the remedies which may be granted by the Tribunal. Article 10 of the Statute provides for the following remedies:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Appeals Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph:

(b) Compensation, which shall normally not exceed the equivalent of two years’ net base salary of the Appellant. The Appeals Tribunal may, however, in exceptional cases order the payment of a higher compensation and shall provide the reasons for that decision.\textsuperscript{425}

\textsuperscript{418} Id. at ¶ 4.
\textsuperscript{419} Id. at ¶ 1.
\textsuperscript{420} Id. at ¶ 42.
\textsuperscript{421} Id.
\textsuperscript{422} Id.
\textsuperscript{423} Id.
\textsuperscript{424} Id. at ¶ 43.
Although these are explicit provisions for the granting of remedies by the Appeals Tribunal, the question arises whether the Tribunal will limit itself to these provisions. The Appeals Tribunal should not grant remedies beyond those stated in the Statute.

In *James v. Secretary-General of the United Nations*, the Appeals Tribunal dismissed the Appellant’s appeal that the Dispute Tribunal erred in not finding that he qualified for a P-3 post and in not awarding him compensation for loss of opportunity.\(^{426}\) The Dispute Tribunal awarded the Appellant three months’ net salary for distress caused by the Organization.\(^{427}\) The Secretary-General filed a cross-appeal and contended that the legal framework governing compensation precluded the award of compensation to the Appellant.\(^{428}\) Article 10(7) of the Statute of the Dispute Tribunal expressly prohibits exemplary or punitive damages.\(^{429}\) The Appeals Tribunal upheld the Respondent’s cross-appeal and set aside the order for compensation for three months.\(^{430}\) The Appellant did not request compensation and did not ask for damages.\(^{431}\) There was no evidence of damages or injuries.\(^{432}\) In this case, the Appeal Tribunal held that the applicable law governing compensation precluded the award of any compensation for loss of opportunity and dismissed the appeal.\(^{433}\)

In *Wu v. Secretary-General of the United Nations*, the Dispute Tribunal ruled in favor of the Appellant that he was wrongly denied an appointment to the P-4 level and awarded him compensation under the provisions of Article 10(5)(b) of the Statute of the Dispute Tribunal.\(^{434}\) The Secretary-General appealed the decision based on error in law and fact by the Dispute Tribunal in awarding compensation for moral damages.\(^{435}\) The Secretary-General did not appeal the finding on the


\(^{427}\) *Id.* at ¶ 3.

\(^{428}\) *Id.* at ¶ 27.

\(^{429}\) *Id.* at ¶ 30.

\(^{430}\) *Id.* at ¶ 35.

\(^{431}\) *Id.* at ¶ 46.

\(^{432}\) *Id.* at ¶ 9.

\(^{433}\) *Id.* at ¶ 9.


\(^{435}\) *Id.* at ¶ 9.
merits that the Appellant was wrongly denied an appointment. The Secretary-General claimed that the compensation awarded by the Dispute Tribunal was for moral damages based on procedural non-compliance and therefore primarily punitive. The Appeals Tribunal held that under Article 10(5)(a) of the Statute of the Dispute Tribunal, in all cases of rescission or specific performance, where the contested administrative decision concerns appointment, promotion or termination, without exception, the Tribunal must set an amount of compensation as an alternative. The Dispute Tribunal may award compensation under Article 10(5)(b) as an alternative remedy. Compensation which is properly awarded for loss or damage suffered by an Appellant under Article 10(5)(a) or (b) cannot be overruled as exemplary or punitive under Article 10(7) of the Statute of the Dispute Tribunal. However, the Appeals Tribunal held that not every violation of due process rights will necessarily lead to an award of compensation. The Appeals Tribunal upheld the Dispute Tribunal’s decision and decided that an award of compensation for non-pecuniary damage does not amount to an award of punitive or exemplary damages designed to punish the Organization.

In Asaad v. Commissioner-General of UNRWA, the Appeals Tribunal found that the Appellant had provided evidentiary proof of erroneous and inconsistent errors. The Appeals Tribunal acknowledged that the administration had broad discretionary authority to terminate appointments but noted that this discretion is not unfettered. The Tribunal relied upon the former UN Administrative Tribunal’s jurisprudence that the administrative decision must not be “arbitrary or motivated by factors inconsistent with proper administration … [and] not … based on erroneous, fallacious or improper motivation.” In this case the Appeals Tribunal found that the decision to terminate the Appellant was

436. Id.
437. Id. at ¶ 14.
438. Id. at ¶ 31.
439. Id.
440. Id.
441. Id. at ¶ 33.
442. Id.
444. Id. at ¶ 11.
445. Id.
based on erroneous evidence and rescinded the decision. The Appeals Tribunal ordered as an alternative to reinstatement of the Appellant under Article 9(1) of the Statute of the Tribunal, compensation for loss of earnings and compensation for delay in the consideration of the appeal (a five year delay) as an equitable remedy for the harm suffered by the Appellant.

In Ardisson v. Secretary-General of the United Nations, the Appeals Tribunal held that a request for compensation for moral damages cannot be made the first time on appeal. The Appeals Tribunal reviewed the issues raised in the appeal regarding the level of compensation set by Article 10(5)(a) of the Statute of the Dispute Tribunal. In accordance with Article 10(5)(a), the Secretary-General has the right to elect between either paying compensation, in cases of appointment, promotion, or termination, or implementing the order of specific performance. The Appeals Tribunal considered that the Dispute Tribunal should be guided by two elements for compensation for promotion cases. The first element is the nature of the irregularity which led to the rescission of the contested administrative decision. The second element is the chance that the staff member would have been recommended for promotion had the correct procedure been followed. The Dispute Tribunal would be in the best position to decide on the level of compensation. The Appeals Tribunal held that the Dispute Tribunal was correct in determining the measure of compensation under Article 10(5)(a).

The Appeals Tribunal upheld this standard of review for compensation in promotion cases in Solanki v. Secretary-General of the United Nations. The Appeals Tribunal reviewed the issues regarding the

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446. Id. at ¶ 1.
447. Id.
449. Id. at ¶ 19–21.
452. Id.
453. Id.
454. Id. at ¶ 26.
455. Id.
level of compensation set by the Dispute Tribunal under Article 10(5)(a) of the Statute of Dispute Tribunal.\textsuperscript{457} The Appeals Tribunal again considered that the Dispute Tribunal should be guided by these two elements for compensation in cases for promotion—the nature of the irregularity and the chance that the staff member would have been recommended for promotion had the correct procedure been followed.\textsuperscript{458} The Appeals Tribunal held that the Dispute Tribunal was correct in determining the measure of compensation under Article 10(5)(a) and the amount set was reasonable.\textsuperscript{459}

However, in \textit{Parker v. Secretary-General of the United Nations}, the Appeals Tribunal held that Article 10(5)(a) of the Statute of the Dispute Tribunal only applied to decision in regards to staff members’ appointments, promotions, or terminations, but not to placement of staff between assignments.\textsuperscript{460} The Appeals Tribunal ordered the Appellant’s reinstatement and reversed the Dispute Tribunal’s order for payment as an alternative option.\textsuperscript{461}

In \textit{Warren v. Secretary-General of the United Nations}, the Appeals Tribunal met \textit{en banc} in accordance with Article 10(2) of the Statute to decide whether the Dispute Tribunal may order pre-judgment and post-judgment interest on compensation and, if so, what interest rate applies.\textsuperscript{462} The issue on appeal was whether the Dispute Tribunal erred when it ordered that the Secretary-General pay interest on the compensation at the rate of eight percent per year from the date of the administrative decision until the date of payment.\textsuperscript{463} In the Statutes of the Dispute Tribunal and the Appeals Tribunal there is an absence of express power to award interest.\textsuperscript{464} The Statute of the Dispute Tribunal under Articles 10(5)(b) and 10(7) and the Statute of the Appeals Tribunal under Articles 9(1)(b) and 9(3), limit both of the Tribunals’ powers to award compensation to the

\textsuperscript{457} \textit{Id.} at ¶ 18–21.
\textsuperscript{458} \textit{Id.} at ¶ 20.
\textsuperscript{459} \textit{Id.} at ¶ 21.
\textsuperscript{461} \textit{Id.} at ¶ 15.
\textsuperscript{463} \textit{Id.} at ¶ 9.
\textsuperscript{464} \textit{Id.} at ¶ 10.
Applicant/Appellant.\textsuperscript{465} The limitations include the amount of compensation, which can only be exceeded in exceptional cases, and prohibit the award of exemplary or punitive damages.\textsuperscript{466} The Appeals Tribunal found that the purpose of compensation is to place the staff member in the same position he or she would had been had the Organization complied with its contractual obligations.\textsuperscript{467} The award of interest by the Tribunals is necessary to ensure that payments to staff are made by the Organization.\textsuperscript{468} Therefore, the Appeals Tribunal reasoned that both the Dispute Tribunal and the Appeals Tribunal must have the power to award interest in the normal course of ordering compensation.\textsuperscript{469} Although there was a dissenting opinion in \textit{Warren}, the majority of the judges of the Appeals Tribunal held that interest would be awarded at the US Prime Rate applicable at the due date of the entitlement (5.25 percent) calculated from the due date of the entitlement to the date of payment of the compensation awarded by the Dispute Tribunal.\textsuperscript{470} The Appeals Tribunal further held that its judgments shall be executed within 60 days from the date of the issuance of the judgment to the parties.\textsuperscript{471} “If [the] Judgment is not executed within 60 days, 5 percent shall be added to the US Prime Rate from the date of expiry of the 60-day period to the date of payment of the compensation.”\textsuperscript{472} Judge Boyko filed a dissenting Opinion in \textit{Warren}.\textsuperscript{473} Judge Boyko stated that the Statute of the Dispute Tribunal is silent on the issue of payment of interest and General Assembly resolution 63/253 expressly affirmed that the Dispute Tribunal and the Appeals Tribunal “shall not have any powers beyond those conferred under their respective Statutes.”\textsuperscript{474} Judge Boyko reasoned that if a statute is silent on the matter, the Appeals Tribunal may consider the \textit{travaux préparatoires} of the Statutes.\textsuperscript{475} According to the legislative history of the Statute of the Dispute

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\textsuperscript{466} \textit{Warren}, supra note 466, at ¶ 11.
\textsuperscript{467} Id. at ¶ 10.
\textsuperscript{468} Id.
\textsuperscript{469} Id. at ¶ 14.
\textsuperscript{470} Id. at ¶ 17.
\textsuperscript{471} Id.
\textsuperscript{472} Id.
\textsuperscript{473} Id. at 8 (Boyko, J., dissenting).
\textsuperscript{474} Id. (quoting G.A. Res. 63/253, supra note 469, at ¶ 28).
\textsuperscript{475} Id.
Tribunal, an explicit grant of power to award interest was considered by the General Assembly, but was not included in the final Statute. Judge Boyko found that the power to impose interest was deliberately and specifically excluded from the Statute of the Dispute Tribunal and that the Dispute Tribunal had erred and exceeded its jurisdiction by imposing interest.

XIII. PROCEDURES BEFORE THE APPEALS TRIBUNAL

Tribunals establish their own procedures. The Appeals Tribunal is in the best position to decide the appropriate procedures for the fair and expeditious disposal in the management of its cases. Further, the Appeals Tribunal will not interfere lightly with the broad discretion of the Dispute Tribunal in the management of its cases in accordance with Article 19 of the Rules of Procedure of the Dispute Tribunal. In matters before the Appeals Tribunal, it is for the Tribunal to decide the proper procedures for the disposition of cases as long as the discretion is exercised under an implied or express grant of power.

A. Additional Pleadings

In Crichlow v. Secretary-General of the United Nations, the Appellant filed an appeal to the Appeals Tribunal and the Secretary-General filed his answer. The Appellant filed a reply to the Secretary-General’s answer. Thereafter, the Secretary-General filed a cross-appeal and the Appellant filed an answer to the cross-appeal. The Appeals Tribunal

476. Id.
477. Id., at 8–9.
478. Id. at 10, 17.
479. Statute of the United Nations Appeals Tribunal, Article 6(2) provides, “[t]he rules of procedure of the Appeals Tribunal shall include provisions concerning …(c) Organization of work.”
480. G.A. Res. 64/119, at 9, U.N. Doc. A/Res/64/119 (Jan. 15, 2010), “All matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Appeals Tribunal on the particular case, by virtue of the powers conferred on it by article 6 of its statute.”
481. Statute of the United Nations Appeals Tribunal, Article 31(1)
483. Id.
484. Id. at ¶ 8.
noted that Articles 8 and 9 of the Rules of Procedure provide for an Appellant to submit an appeal form accompanied by a brief and for the respondent to submit an answer form accompanied by a brief.\footnote{Id. at ¶ 27.} The Appeals Tribunal held that there was “no provision under the Rules for additional pleadings to be submitted by the parties after the answer. Under Article 31(1) of its Rules of Procedure, the Appeals Tribunal may allow additional pleadings in exceptional circumstances.”\footnote{Id.} The Appeals Tribunal determined that the Appellant did not demonstrate any exceptional circumstances justifying the need to file a reply to the Secretary-General’s answer and decided to strike the Appellant’s additional submission.\footnote{Id. at ¶ 29.} The Secretary-General’s cross-appeal challenged the UNDT’s decision to award damages.\footnote{Id. at ¶ 33.} The Appeals Tribunal noted that since the Secretary-General had already paid the damages, it confirmed the UNDT judgment and the cross-appeal was rendered moot.\footnote{Id. at ¶ 34.} The Appeals Tribunal dismissed both the appeal of the Appellant and the cross-appeal of the Respondent.\footnote{Id. at ¶ 35.}

In *Solanki v. Secretary-General of the United Nations*, the Appeals Tribunal held that under Articles 8 and 9 of its Rules of Procedures there is no provision for additional pleadings to be submitted by the parties after the filing of the Applicant’s appeal and the Respondent’s answer.\footnote{Solanki v. Secretary-General of the United Nations, Judgment No. 2010-UNAT-044, ¶ 29 (July 1, 2010), available at http://www.un.org/en/oaj/files/unat/judgments/2010-unat-044.pdf.} In accordance with Article 6 of the Statute and Article 31(1) of the Rules of Procedure of the Appeals Tribunal, the Tribunal may allow additional pleadings in “exceptional circumstances.”\footnote{Id. at ¶ 13.} The Appellant in *Solanki* did not identify any exceptional circumstances justifying the need to file observations in reply to the Secretary-General’s answer.\footnote{Id.} The Appeals Tribunal struck out the observations.\footnote{Id.} In *Wasserstrom v. Secretary-General of the United Nations*, the Appeals Tribunal reaffirmed that under Article 6 of its Statute and Article 31(1) of its Rules of Procedure,
the Tribunal may allow additional pleadings only in exceptional circumstances. The parties did not demonstrate any exceptional circumstances to justify a need for additional pleadings and the Appeals Tribunal did not take them into consideration.

B. Ex parte Orders

In Macharia v. Secretary-General of the United Nations, the Appellant brought an ex parte motion before the Dispute Tribunal for extension of one year to file her substantive application. The Dispute Tribunal granted the Appellant’s ex parte motion and ordered the extension. The Appellant filed another ex parte motion which the Dispute Tribunal denied. The Appeals Tribunal upheld the Dispute Tribunal’s decision that the Appellant did not avail herself of opportunities to advance her application and dismissed the appeal.

C. Oral Hearings

In a number of cases the Appellants requested an oral hearing to appear before the Appeals Tribunal. In the majority of cases the Appeals Tribunal noted that the parties’ submissions were sufficient and that the Appeals Tribunal did not require an oral hearing under Article 8 (3) of its Statute to assist in the determination of the appeals. In Campos v. Secretary-General of the United Nations—the first case delivered by the Appeals Tribunal—the Tribunal established the grounds for an oral hearing. The Tribunal rejected the motion for an oral hearing based on the reasoning that the Applicant had the opportunity to make a full written argument on all issues and provided no submission on the need

496. Id.
498. Id.
499. Id.
500. Id. at ¶ 13–15.
to call oral evidence or presented any particular complexity of the case which would demand an oral hearing or hearing of witnesses.\textsuperscript{502} The Appeals Tribunal placed the burden on the Applicant to show to the Tribunal that an oral hearing is necessary.\textsuperscript{503}

\textit{D. Production of Evidence}

In \textit{Calvani v. Secretary-General of the United Nations}, the Secretary-General appealed against Order No. 39 (GVA/2009), in which the Dispute Tribunal ordered the Administration to submit by December 18, 2009, a signed confirmation from the Secretary-General that he made a decision to place a staff member on administrative leave without pay pursuant to provisional staff rule 10.4.\textsuperscript{504} The respondent on behalf of the Secretary-General contended that the appeal was receivable since the contested order created a legal obligation for one party and questioned whether the Dispute Tribunal had exercised its authority appropriately.\textsuperscript{505} The staff member asserted that the contested order was an interim measure and not subject to appeal.\textsuperscript{506} The Appeals Tribunal considered Article 9(1) of the Statute of the Dispute Tribunal which states, “(t)he Dispute Tribunal may order production of documents or such other evidence as it deems necessary” and Article 18(2) of the Rules of Procedure of the Dispute Tribunal that provides “the Dispute Tribunal may order the production of evidence for either party at any time and may require the person to disclose any document or provide any information that appears to the Dispute Tribunal to be necessary for a fair and expeditious disposal of the proceedings.”\textsuperscript{507} Article 19 of the Rules of Procedure provides that “[t]he Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.”\textsuperscript{508}

The Appeals Tribunal held in \textit{Calvani} that the Dispute Tribunal has

\textsuperscript{502} Id.
\textsuperscript{503} Id.
\textsuperscript{505} Id. at ¶ 5.
\textsuperscript{506} Id. at ¶ 7.
\textsuperscript{507} Id. at ¶ 8.
\textsuperscript{508} Id.
discretionary authority to decide case management and the production of evidence in the interest of justice.\textsuperscript{509} If the Dispute Tribunal had committed an error in ordering the production of a document that was immaterial, non-existent, or deemed confidential or drew erroneous conclusions in law or in fact in the final judgment, it would be the responsibility of the respondent to appeal the final judgment.\textsuperscript{510} The Dispute Tribunal has the discretion to decide on the necessity of the measure of inquiry and it is not in the interest of the system of justice to consider an appeal against a simple measure of inquiry.\textsuperscript{511} The Appeals Tribunal considered the appeal as not receivable and rejected the appeal.\textsuperscript{512}

\textbf{E. Clerical Error}

In \textit{El Khatib v. Commissioner-General of UNRWA},\textsuperscript{513} the Appellant filed an application with the Appeals Tribunal requesting reconsideration of the Appeals Tribunal’s earlier judgment\textsuperscript{514}. The Appellant claimed that the Tribunal had erred in rejecting her appeal on the grounds of it being time-barred and therefore should reconsider the merits.\textsuperscript{515} The Appeals Tribunal noted that the President of the Administrative Tribunal had extended the deadline to June 30, 2009.\textsuperscript{516} However, the Appellant’s appeal was received on July 6, 2009 and not receivable.\textsuperscript{517} Accordingly the error committed by the Appeals Tribunal did not alter the essence of the judgment—the Appellant was time-barred.\textsuperscript{518} Based on Article 26 of the Rules of Procedure of the Appeals Tribunal, “[c]lerical or arithmetical mistakes, or errors arising from any accidental slip or omission may at any time be corrected by the Appeals Tribunal, either on its own initiative or on the application by any of the parties on

\begin{footnotesize}
\begin{align*}
509. & \text{Id. at ¶ 9.} \\
510. & \text{Id.} \\
511. & \text{Id. at ¶ 10.} \\
512. & \text{Id. at ¶ 11.} \\
515. & \text{Id. at ¶ 11.} \\
516. & \text{Id. at ¶ 8.} \\
517. & \text{Id. at ¶ 9.} \\
518. & \text{Id.} \\
\end{align*}
\end{footnotesize}
a prescribed form."519 The Appeals Tribunal issued a “Correction of Judgment” in El Khatib 2, and corrected the error of dates.520

F. Technical Defect

In Xu v. Secretary-General of the United Nations, a technical defect occurred in sending the email to notify the counsel representing the Secretary-General of a hearing before the Dispute Tribunal.521 The counsel did not receive the email and the Secretary-General was denied an opportunity of participating in a hearing.522 The Appeals Tribunal remanded the case back to the Dispute Tribunal for a retrial since the Secretary-General’s counsel did not receive the email and was not properly served with the hearing notice.523

G. Confidentiality of Mediation Documentation

Article 15 of the Rules of Procedure of the Appeals Tribunal states that, except in cases concerning enforcement of a settlement agreement, all documents prepared for, and oral statements made during, any informal conflict-resolution process or mediation are absolutely privileged, confidential, and should never be disclosed to the Appeals Tribunal.524

In El Khatib 1, the Appeals Tribunal upheld the decision on the grounds of time-barred and held the appeal was not receivable.525 What is noteworthy in El Khatib 1, if the appeal had been receivable, the Appeals Tribunal may have considered the Applicant’s request to withdraw a document from the defense case which contained information relating to an informal process to settle the dispute.526 Article 15(1) of the Rules of Procedure of the Appeals Tribunal excludes documents made during any informal conflict-resolution process or mediation as absolutely privileged and confidential.527 If the appeal had been receivable, the
Appeals Tribunal would have considered the Appellant’s argument that under Article 15 the document should have remained confidential and not released to the Tribunal.\(^{528}\)

\(H.\) Request Investigation Report

In Balestrieri v. Secretary-General of the United Nations, the Appellant’s fixed-term appointment was not extended due to a lack of funding for the post.\(^{529}\) Prior to her non-renewal the Appellant, among others, complained about working relations and an investigation ensued.\(^{530}\) The Appellant requested a copy of the preliminary investigation report, but the Dispute Tribunal held that she was not entitled to receive it because she had not pursued a formal complaint of harassment.\(^{531}\) The Appeals Tribunal held that the administration had placed the Appellant elsewhere during the investigation and she received several extensions of her contract, which was inconsistent with any pattern of constructive dismissal.\(^{532}\) The Appeals Tribunal did not directly address whether the Appellant, as a participant in an investigation and not the formal complainant, had a right to a copy of the preliminary investigation report.

\(I.\) Staff-Management Relationship—Harassment

In Parker v. Secretary-General of the United Nations, the Appellant filed an appeal that the Dispute Tribunal erred in law by excluding his non-promotion in a promotion exercise and by dismissing his claim that he was not promoted based on harassment.\(^{533}\) The Appeals Tribunal recognized that one incident may amount to harassment.\(^{534}\) However, the Appellant was unable to discharge the onus to provide sufficient evidence of harassment, prejudice, or any kind of improper motivation.

\(^{528}\) Id.


\(^{530}\) Id.

\(^{531}\) Id.

\(^{532}\) Id. at ¶ 24.


\(^{534}\) Id. at ¶ 38.
against him.\textsuperscript{535} Although the onus is upon the complainant, and not management to make the choice of informal or formal procedures to deal with a complaint, the Appeals Tribunal raised concern with the manner in which UNHCR handled the Appellant’s complaint.\textsuperscript{536} The Appellant alleged that his managers deprived him of work which amounted to harassment.\textsuperscript{537} The Appeals Tribunal considered that UNHCR, through its managers, failed to resolve the managerial issue and deprivation of substantive work, if it had been substantiated, constitutes a “regrettable departure from regular supervisor-supervisee relations.”\textsuperscript{538}

**XIV. CONCLUSION**

In this overview of the new UN administration of justice system, a review has been undertaken of the evolution of the process from the former internal justice system to the development of the new administration of justice system. The Appeals Tribunal had a partially blank slate upon which to begin a new jurisprudence in international administrative law. In the first two sessions, the Appeals Tribunal decided upon a wide range of issues ranging from receivability, case management, disciplinary measures and pension cases. As the UN attempts to reform and streamline its bureaucratic structure for the 21st century, the judicial tribunals must evolve to reflect the corresponding changes in judicial procedural and substantive law. Today in the UN, contractual arrangements are less permanent, presenting instability and uncertainty in employment security for the staff member. Modern day issues such as professional harassment, gender discrimination, same-sex marriages, employer retaliation, or the proprietary rights of technology will likely come before the Appeals Tribunal in different forms. It was important for the Appeals Tribunal to establish its judicial authority in the first two sessions. First, the Appeals Tribunal established itself as a Tribunal of limited jurisdiction for appeal. Second, the Appeals Tribunal held the Dispute Tribunal accountable for the fairness of its decisions for both the Secretary-General and the staff member, and certainty of procedures for all stakeholders who appear before the Tribunals.

\textsuperscript{535} Id.
\textsuperscript{536} Id. at ¶ 37–43.
\textsuperscript{537} Id.
\textsuperscript{538} Id. at ¶ 43.
In General Assembly resolution 65/251 of March 2, 2011, the General Assembly emphasized the importance of “the principle of judicial independence” and reaffirmed that the “system of administrative justice [will be] consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike.” The Appeals Tribunal makes decisions that affect people’s lives. UN staff members expect that the Appeals Tribunal will render a reasonable and fair result to ensure that their legal rights will be respected. In the first two sessions, the Appeals Tribunal has made great strides in this direction.

539. GA Res. 65/251, UN GAOR, 65th Sess.
540. Id.